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The Concept of "Nature" In Liberal Political Thought

by Norman Barry

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The connection between a theory of human nature and normative political theory is a puzzling one. Despite the depredations suffered by naturalistic theories of ethics and politics at the hands of prescriptivist (and other) moral philosophers, the temptation to found a political theory on some allegedly unalterable facts of human nature is an abiding one for philosophers of differing political persuasions. Indeed, it is the promiscuity of the concept of nature, which appears to affix herself permanently to no one doctrine, that has encouraged hardheaded skeptics to be so critical of the attempt to connect values to supposed indubitable "facts" about man and society.

Nevertheless, it is still maintained that a coherent political theory must ultimately reflect certain views about the "person," individual autonomy, and rationality—even if there is no one unique conception of human nature that can arbitrate between rival political doctrines. This is because in the absence of such a conception, there are no constraints, apart from logic and consistency, on what may count as legitimate moral and political principles. For example, one common complaint against Nozick's rights-based theory of the minimal state is that since there is no sustained attempt to derive a compelling naturalistic foundation for those rights, there is no reason why one should accept the substantive conclusions of his reasoning, despite its admitted ingenuity.[1] Furthermore, neither such ingenuity nor the extended use of the criterion of *universalizability* has proved suficient to save noncognitivist theories of ethics and politics from the charge that they evade the fundamental issues of man and society.

Of course, political and moral theorists whom we would describe as nonnaturalist would deny that normative arguments are consistent with *any* concept of the person, or that the social philosopher is completely unconstrained in his description of the agents who are to be the bearers of his principles: It is rather that those principles are adopted as a result of human *choice* and *decision*. In other words, they are not dictated to us by an objective nature. Thus, although the kinds of moral

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and political principles recommended by nonnaturalist social philosophers will be influenced by their conceptions of human nature, what such conceptions cannot do is validate ethical convictions. Furthermore, in this view, which has become almost standard in twentieth century ethical and political thinking, reason has little or no role in the determination of value. Its role is calculative and instrumental—the manipulator, not the determinant, of human values.

While the disagreements between naturalists and nonnaturalists are well known, what is less familiar is the fact that similar disputes have occurred (and are occurring) throughout the history of liberal thought. Any sustained inquiry into the *foundations* of the doctrine of classical liberalism reveals a wide variety of opinions, many of them conflicting, which belies the unity the doctrine displays to the public.[2] Even in histories of political thought, differences within the liberal individualist tradition are presented as differences of degree rather than of philosophical principle.

An initial distinction, however, should be made between *deontological* and *teleological* theories of a free (in both an economic and political sense) society. The Kantian or deontological case for liberal individualism rests upon there being absolute side constraints on what one person may do to another, rather than the beneficial consequences, for anonymous society or for the individual, that follow from free action. As Nozick puts it:

> Political philosophy is concerned only with *certain* ways that persons may not use others; primarily physically aggressing against them. A specific side constraint upon action towards others expresses the fact that others may not be used in the specific ways that the side constraint excludes.[3]

Kantian liberalism's lack of dependence on a particular concept of the person is nicely illustrated by the fact that the existence of side constraints limits our behavior toward nonhumans. Nozick shows, in an intellectually persuasive and morally uplifting passage, that such considerations should govern the way we treat animals, and this would imply that liberalism does not limit itself to the protection of human interests.[4]

However, a *purely* side-constraints approach is comparatively rare in the history of liberal thought. Rights-based classical liberalism has normally depended on some concept of nature, if only to establish the identity of those whom the doctrine classifies as rights-bearers. In fact, the more common liberal tradition is a utilitarian one, in which rights play a secondary rather than a decisive role; and in it purely ethical considerations are less important than the description of those natural processes that are said to characterize free societies.

II

The theories of classical liberalism that do call upon a concept of nature are of two distinct philosophical species, even though, in terms of political *ideology,* they might look pretty much the same. The one describes the liberal market order

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and the moral rules necessary for its efficient operation, in terms of coordinating and self-correcting mechanisms that can be predicted to emerge if men are left as individuals to pursue their private ends. It is "natural" because it is spontaneous. In contrast, the other justifies the typical liberal social and economic institutions, not in terms of their being the *natural* outgrowths of a spontaneous social order, but because they alone are consistent with an essentially metaphysical conception of man.

The first of these liberal approaches is associated with David Hume, Adam Smith, and the eighteenth century antirationalist tradition—although the first systematic description of the natural, coordinating properties of private action is in Mandeville's *Fable of the Bees.*[5] In the twentieth century, it has continued with the work of Hayek.[6] In this tradition, the customary contrast between *nature* and *convention* is modified in important ways. Instead of the world being described exclusively in terms of natural events of a physical kind (over which man has no control) and social phenomena, such as rules and moral practices, which are entirely a product of the (ultimately arbitrary) will of man, a "third world" of "natural" or spontaneous processes is postulated.[7] These "third world" phenomena—exemplified in natural languages, equilibrating markets, and common law systems—are in an obvious sense the product of human action, yet they are clearly not arbitrary and are not alterable at will (at least not without great damage being done to the social fabric); they consist of *regularities* that are amenable to the same type of scientific investigation (in principle) as the regularities of the physical world.[8]

The writers in this tradition inevitably structure their normative liberalism on utilitarian foundations, although it is an *indirect* utilitarianism that sees beneficial social consequences as the accidental outcome of individual action rather than the activist, rationalistic utilitarianism of Bentham.[9] Also, they regard ethical and political judgments as subjective decisions derived from sentiments and feelings rather than as the conclusions of an objective reason. A major achievement of theirs has been the demonstration that just because moral and political judgments are subjective, it does not follow that the rules by which a society lives are necessarily arbitrary or that we cannot discriminate between differing normative principles.

In the second view, however, "nature" is given a rather different role. Instead of being used in a descriptive sense, i.e., to indicate that there are social regularities and uniformities of which normative theory must take account, nature itself becomes the source of ethical values. Furthermore, reason is not confined to a calculative role of adjusting objective means to subjectively determined ends, but plays a substantive role in the objective demonstration of those ends themselves. Thus, reason becomes crucial in understanding what a moralized conception of nature implies for social conduct.

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This conception of nature leads to a rights-based rather than a utility-based liberalism. Rights are interpreted as the criteria by which existing social orders and evolving legal systems should be evaluated rather than as the accidental and, therefore, *valued* outgrowths of these processes. In this view no violation of these rights is permitted, even if there should be clear benefits to an anonymous society from such an abridgement. *Order* can have no intrinsic value: Only the experiences of individuals have value.

The difficulty in presenting an overall understanding of this latter doctrine lies in the fact there is no one coherent and unambiguous statement of it in the history of political thought. Indeed, there are at least two startlingly different uses of nature as the source of liberal morality. In one, the broadly "Lockean" view, nature is used simply as a grounding for rights, and no complex teleology of man is presupposed. This is the familiar natural rights tradition of classical liberalism, and although perhaps little progress has been made in the way of the intellectual establishment of such a grounding, most writers agree that it is an essential element in the liberal credo. It is often held in conjunction with a utilitarian position, as it is, for example, in the case of Bastiat.[10]

However, there is an obscure, almost underground, tradition in liberal thought that has an implicitly teleological element. This is most prominent in the work of the twentieth century laissez-faire thinkers, Ayn Rand[11] and Murray Rothbard.[12] Surprisingly, in these authors explicitly Aristotelian and Thomist foundations are constructed and used to support extreme libertarian political and economic ideologies. In Rothbard's case, a political and economic philosophy of private-property anarchism is derived, ultimately, from a Thomist teleology. In these doctrines, we find a remarkable similarity in philosophical underpinnings to the work of J. Finnis and Alasdair Macintyre[13]—although, of course, in these writers, reflection on man's nature and purpose is used to buttress a much more communitarian and, indeed, explicitly (in the case of Macintyre) anticapitalist social philosophy.

In what follows, I shall be mainly concerned with an explication of a broadly utilitarian naturalistic liberalism. However, in exposing some clear deficiencies in this doctrine, I shall indicate in what ways the alternative classical liberal naturalistic foundation may be said to repair these deficiencies.

III

The eighteenth century "Scottish Enlightenment"[14] is the primary source for our utilitarian theory of classical liberalism: It was the systematic exposition of the spontaneous, self-correcting mechanisms of commercial society that made possible the original inference that no central planner could improve on the outcome of a market process. Of all the thinkers in this "movement," Hume and Smith are clearly the most important; for although they destroyed the traditional

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rationalistic theory of natural law, they founded a liberalism that nevertheless relied on a theory of natural processes.

Hume is perhaps less easy to place in the classical liberal tradition, since most commentators maintain that his general skepticism drives him into a conservative traditionalism.[15] However, it seems to me that the foundations of morality and law that Hume produces are remarkably similiar to those of twentieth century utilitarian classical liberals, most of whom would be described as radical rather than conservative.

Hume's argument for the subjective nature of moral judgments is well known. Morality is a matter of feelings and emotions; for it is these that move us to action, not reason.[16] Reason is limited to the manipulation of analytic truths and the cool evaluation of empirical data. As for the ends that men *ought* to pursue, reason cannot pronounce upon them. As Hume said, "It is not contrary to reason to prefer the destruction of the world to the scratching of my finger." All our political and moral judgments must ultimately rest upon sentiment or, indeed, prejudice, and none can claim to be rationally persuasive. Yet the curious thing is that Hume proceeded to show that certain sorts of moral and political rules (of a basically classical liberal type) were not only *demonstrably* superior to those of doctrinaire "enthusiasts" and "zealots," but also had a universal validity. This superiority was not derived from formal, deductive reasoning but from an understanding of the nature of man and of social processes.

Hume's claim is that the behavior of men can be explained by laws of cause and effect—just as the rest of the natural world is explained. This is so because he regarded the nature of man as more or less unchanging. Therefore, he argued that plans of government that suppose a "great reformation in the manners of mankind are plainly imaginary,"[17] and that all ethical and political rules must be founded on the fact that men "cannot change their natures. All they can do is change their situation and render the observance of justice the immediate *interest* of some particular persons."[18]

What Hume wants to show, then, is that a proper understanding of *man as he is* and not some chimerical notion of *man as he might be* lies at the heart of correct moral and social theory. Although no conception of man, no matter how factually correct, can of itself generate a moral principle, we can discriminate between subjectively determined principles in accordance with how they cohere with what Hume regarded as universally true facts of man and society. The superiority, then, of Hume's liberal-conservative principles rests not on their higher "rationality" but on their consistency with certain unalterable natural facts of the human condition.

These facts are quite simple. First, men show a natural partiality to their own interests.[19] This is not a statement of a Hobbesian egoism which implies that the "natural" world is a war of all against all, out of which man can escape only

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by reason and artifice, but an empirical statement to the effect that while men do have a capacity for benevolence, this is too fragile a sentiment on which to found a social order. Second, that they have a tendency to prefer their present to their more remote interests[20] (the universal feature of time preference). Thus, while one passion might direct men to their long-run interests, a more powerful passion is always likely to deflect men away from them. In his discussion of this issue, Hume anticipates the modern liberal theory of state action for the production of public goods. Add to these features the universal fact of *scarcity,*[21] and therefore the necessity for some property laws, and we have those technically contingent but pretty much unalterable features of the human condition or natural regularities out of which a proper concept of natural law should be constructed.

Hume's liberal theory of society emerges when he explains how men hit upon those "conventional" rules that prevent their natural passions from damaging their long-run interests. However, these rules are not *merely* conventional and they are certainly not arbitrary; and though Hume does speak of them as a product of reflection, they are not the product of artifice or an unaided reason. They are the result of natural processes when *natural* is defined in a special way. What Hume tries to show is that the rules of justice and property emerge by a process of spontaneous evolution and therefore constitute examples of the "third world" of social phenomena discussed above. The rules of *commutative* justice described in the phrase "stability of possessions, of its transference by consent and the performance of promises"[22] provide for those unchanging natural facts of scarcity and limited generosity. In contemporary language Humean justice would be described as "procedural" rather than "end-state", since it is concerned not with the desirability or otherwise of particular *total* social and economic arrangements, but with individual conduct. Thus, the rules of *commercial* society are held to be superior to other rules, to egalitarian rules, for example, because they are more consistent with the facts of human nature. Their attraction lies not in their superior rationality but in the fact that they are approved of.

Furthermore, the rules of justice and property emerge in an undesigned manner through the mechanism of *personal* interest: "Those rules, by which property, right and obligation are determined . . . have all of them a direct and evident tendency to public good" but it is "self love which is their real origin."[23] Thus for Hume, liberal morality is utilitarian: The rules of justice and property are not designed for the protection of individual rights, for which reason can provide no grounding, but they emerge naturally for the benefit of anonymous members of society. What distinguishes them from *mere* prejudice and superstition is precisely this utilitarianism. Thus Hume claims, "Though the rules of justice be artificial, they are not arbitrary. Nor is the expression improper to call them laws of nature, if by natural we understand what is common to any species."[24]

Alasdair Macintyre doubts that those features of natural man that Hume delineates have a genuine claim to universality. He writes: "What Hume iden-

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tifies as the standpoint of universal human nature turns out in fact to be that of prejudices of the Hanoverian ruling elite."[25] It is, of course, true that Hume cannot show in any *formal* sense why a "prejudice" in favor of established property rights and common law rules of exchange should be superior to any other "prejudice." What is important here is that Hume's attempt to discriminate between different "prejudices" on purely utilitarian grounds would be rejected by those classical liberals who, like Macintyre, envisage a more expansive role for reason and nature. Here, the claim is not that Hume's conception of human nature lacks universality, but that it is inadequate to establish a moral case for a private property liberalism that defeats *all* interventionist claims.

IV

Adam Smith, Hume's friend and contemporary, sometimes comes close to such a conception, but ultimately his argument for liberalism is a utilitarian one and to that extent must be, like Hume's, *provisional.* The antirationalism and reliance on sentiments and feelings as the source of our moral judgment is just as emphatic as in Hume. In *The Theory of Moral Sentiments* he writes: "It is altogether absurd and unintelligible to suppose that the first perceptions of right and wrong can be derived from reason."[26] And in a famous passage he condemns the rationalist philosopher for failing to understand that morality is based not on abstract reasoning but on certain mechanisms that determine human action.

> He seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces on a chess board. He does not consider that the pieces upon the chess board have no other principle besides that which the hand impresses upon them; but that, in the great chess board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it.[27]

Furthermore, the division of labor, on which economic prosperity depends, is not the product of some omniscient mind operating in advance of experience, but is a "gradual consequence of a certain propensity in human nature to truck, barter and exchange one thing for another."[28]

The whole of Adam Smith's thought is suffused with the idea of a beneficent nature that is the source of value. The system of "natural liberty" means that every man, as long as he does not violate the laws of justice, should be "left perfectly free to pursue his own interest in his own way, and bring both his industry and capital into competition with those of any other man."[29] Social systems are self-correcting mechanisms and to that extent constitute "natural" phenomena. Although most attention in the history of economic and political thought has been directed toward Smith's description of the natural order of the market, as described in *The Wealth of Nations,* it is clear that logically similar natural processes are at work in his account of the moral order given in *The Theory of Moral Sentiments.*

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In Smith's morality, the pursuit of self-interest is not of itself immoral. There is no necessary dichotomy between virtue and commerce, as Mandeville supposed, and a self-regulating and consistent moral order can be constructed out of individuals motivated primarily by self-love. Only if self-love is uncorrected and unrestrained is it harmful.

This partiality to our own affections is the source of prosperity and progress in economics because it is assumed that here self-interested behavior is constrained by the rules of just conduct. However, in a wider context of moral behavior it is, on its own, an unreliable sentiment. Our initial moral judgments are necessarily *partial,* and, says Smith, this "self-deceit, this fatal weakness of mankind, is the source of half the disorders of human life."[30] But our initial judgments are in a sense hypotheses, which are constantly checked against and corrected by increasingly less *subjective* interpretative criteria. Such criteria are natural to the extent that they are understaood by every human moral agent, and their intrinsic morality precedes their utility.

This independent theory of a natural morality is explicated through the concept "propriety" (or "rightness").[31] That is to say, an action is right or wrong, just or unjust, by reference to a natural moral sentiment, not by reference to known consequences—although this is, of course, quite consistent with the moral censor or legislator being concerned mainly or even entirely with utilitarian considerations.

Propriety is determined by natural "facts," ultimately the approbation of the members of a community. It is the approval of their fellow citizens that individuals seek. Thus people do not merely maximize self-interest in an economic sense, they desire *to be well thought of.*[32] A further crucially important idea is the Smithian notion of *sympathy* in the process of moral evaluation.[33] Now, to sympathize with a person does not mean that we act in his interests in some altruistic sense. It is not equivalent to benevolence, and the stress on sympathy in *The Theory of Moral Sentiments* does not mark any inconsistency with the economic self-interest described in *The Wealth of Nations.* In Smith's moral theory, sympathy is a property of the understanding. Sympathy, or fellow feeling, is the capacity to imagine oneself in another's position and to see things from his point of view; and it is this that transfers a selfish response into a genuine moral judgment.

In a similar way, the concept of the "impartial spectator" widens the sphere of morality. The judgments of a spectator represent a more comprehensive morality because they represent the ideal of *detached* opinion.[34] The conclusions of an impartial spectator, however, do not reflect a substantive morality but rather an idealized procedure for the making of moral judgments—although, of course, it could be argued that classical liberalism's concept of procedural justice does embody that notion of impartiality implicit in the deliberations of a spectator. The final corrective process, or the completion of the distilling out of *pure* self-

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interest, is provided by the idea of "conscience" or the "voice within."[35] This is simply the notion that a naturalistic ethic must account for those inner feelings and sentiments that drive us, however imperfectly, to act morally.

These mechanisms make the description of a moral system not unlike that of an economic one. The only rules that require positive enforcement are the rules of justice, interpreted in a strict commutative sense; all other moral sentiments are self-generating. But the rules of justice, and here Smith departs from Hume, have a natural, not a utilitarian, foundation: People immediately sympathize with the resentment a person feels at an act of injustice, and the propriety of that resentment would be ultimately sanctioned by a spectator.[36] The principles of justice are imprinted on the human personality; they are not the conclusions of our reason, although our reason is an important aid to the understanding of how rules are selected out in a natural process.

The question that arises concerns the connection between this naturalism and the foundations of classical liberalism. The theory is normally interpreted merely as a description of the making of moral judgments rather than a demonstration of the value of any particular kind. Yet there is a clear connection between liberalism and morality in the sense that both economies and moralities are examples of spontaneous orders, of automatically adjusting processes that require little in the way of conscious direction and control.

But why should we value spontaneity? In economics Smith's answer would, superficially, seem to be utilitarian. The system of natural liberty leads to better outcomes than a planned system. The efficient order of the market is brought about naturally through the interaction of the participants in their endeavors to better themselves. Any intervention is, in fact, self-defeating:

> No regulation of commerce can increase the quantity of industry in any part of society beyond what its capital can maintain. It can only divert a part of it into a direction which it might otherwise not have gone.[37]

Such an order can function with the minimum of morality—in fact, the rules of just conduct imposing negative obligations is all that a commercial society requires. There seems to be little suggestion that the system protects *rights* or that economic freedom is a legitimate expression of the human personality irrespective of its socially beneficial consequences.

While these considerations have often been thought to be decisive indications of Smith's utilitarianism, an argument could be made that within the structure of Smith's naturalistic morality, there lies not merely a description of the making of moral judgments but an implicit natural law and natural rights position. Could not the notion of "propriety" and the role of the impartial spectator, despite what was said above, reflect substantive ethical principles? We know that the propriety and impropriety of human actions are determined independently of utility, and sometimes the voice of the spectator speaks with rationalistic overtones in a

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decidedly unHumean manner. For example, in *The Wealth of Nations,* although apprenticeship laws are refuted on utilitarian (efficiency) grounds because they distort price signals in the labor market, they are also condemned as a "manifest encroachment upon the just liberty of both the workman, and of those who might be disposed to employ him."[38] The problem, however, is that the rules of natural justice, and even of the sacred rights of man, of which Smith speaks in *The Wealth of Nations,* may just be exotic expressions of ordinary traditional standards; and that the "impartial spectator" is an early version of the man on the Clapham omnibus rather than spokesman for the immutable standards of an individualist morality.

From what little we know of Smith's jurisprudence,[39] it is clear that his model of law is one in which a legal order is the product of natural processes. Hence his opposition to the command theory of law and his commitment to a spontaneously developing common law system. His admiration for the common law appears to be not only a consequence of the fact that it produces a more stable and predictable order of events than does statute, but also because it is more likely to meet with the standards of "natural justice." Hence much of his criticism of the command model is of a moralistic kind, and the last part of *The Theory of Moral Sentiments*[40] is concerned with explaining how existing systems of positive law fail to meet with general standards of natural justice. Thus, although it is clear that for Smith justice precedes law, it is not clear whether a departure of positive law from natural justice means a departure from an existing consensus as interpreted by the impartial spectator or whether reflection on the nature of man and society gives us genuine moral knowledge that transcends this.

V

Despite the enormous influence exerted by the Hume-Smith tradition in liberal thought, certain obvious deficiencies within it have encouraged a rival and more rationalistic version of the doctrine.

The first and obvious objection is that the whittling down of the role of reason could lead to the disintegration of liberalism into traditionalism and conservatism. In fact, this charge could be leveled at the foremost contemporary exponent of the Smithian approach—F. A. Hayek. In Hayek's later work, the doctrine of spontaneous order has become a neo-Darwinian theory of cultural evolution in which the mere *survival* of an institution appears to guarantee its appropriateness. The limitations of reason dictate that *"All progress must be based on tradition"* (italics in original).[41] Furthermore, all rules and moral principles are relative to a particular stage of evolution, and our capacity to alter them is severely limited by the fact that we can never know the consequences of such alteration. In fact, Hayek goes further than Hume down the conservative path because the latter's persistent skepticism precludes those rules that have "survived" being entitled a priori to greater reverence than any others. Hume's constant appeals to certain *universally true*

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facts of the human condition would make even him rationalistic by Hayek's standards.

The second point is that any form of utilitarianism leaves open to doubt all claims to property. Since, as a matter of logic, an exchange process must begin with objects that are themselves *not* the product of exchange, some moral grounding for entitlement is required. Clearly, a utilitarian demonstration of the benefits of exchange is quite inadequate. Although Hume has a complex theory of entitlement to property, it not only is ultimately utilitarian but has a marked bias toward present possession.[42] This must be so since Hume's antirationalism precludes any Lockean natural law claims to property. Yet contemporary classical liberals have been (rightly) concerned with the morality of claims to particular pieces of property and not just with the utility of the private property *system.*

The third problem is that the concern with an empirical conception of man as he is may be destructive of the liberal order. This is because the economic and political advantages of a free society have *public good* characteristics. That is, the benefits of the market system, free international trade, private property, and the rule of law accrue to the anonymous members of the public at large; therefore, it does not pay any one person or group to produce them. Each group will have an incentive to exempt itself from the rule of law and the system of commutative justice and, of course, to invest in politics rather than production. Now Smith and Hume were certainly aware of this problem, but their philosophy of *man as he is* precludes its solution. Their concept of natural man as virtuous and socially productive is compelling *only* within a certain institutional framework—a framework that is itself threatened by their "minimalist" concept of man as a maximizer of subjective utility.

VI

It is in this context that our other theory of liberal naturalism must be considered. Unfortunately, an exposition of this must be sketchy, incomplete, and garnered from a number of disparate sources. There is no one complete, self-contained statement of classical liberalism based on a naturalistic theory of human rights, and laissez faire theorists have tended to buttress their economic philosophies with moral arguments drawn from philosophical traditions not necessarily associated with free markets and (strictly) limited governments.

As indicated earlier, these philosophical arguments tend to be either an intuitively determined rights theory or a neo-Aristotelian naturalistic theory. Both versions would fall foul of Hume's strictures: The former extends the notion of reason beyond its role in deductive inference and determination of empirical data; the latter commits the fallacy of deriving normative statements from the "facts" of human nature. However, both address themselves to the problems alluded to above. They assert a theory of man that prevents any person being used on behalf of a group or collectivity on any utilitarian ground. This is derived from a

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rationalistic notion of natural law that can be used to evaluate all "positive" legal orders, including those that have emerged spontaneously. From a theory of self-ownership they construct a right to property that does not depend on any social convention and attempts to provide criteria to determine the legitimacy of all entitlements. In the neo-Aristotelian theory especially, a notion of man as he might be hints at a solution to the problem contained in the purely empirical concept of man, i.e., man as a pure maximizer is certain to indulge in forms of action destructive of the institutions of a free society.

The natural rights and natural law tradition is normally associated with Locke, but it is plausible to suggest that the foundations were laid down by Grotius. Grotius was a Christian, but he presented an essentially secular and rational theory of natural law; and although he wrote principally about international law (his *De Jure Beli ac Pacis* was published 1620–25),[43] his theory has direct application to social philosophy. All rational beings are capable of discerning the elements of "law": Among these are the binding nature of promises, the nonaggression principle, and a strong right to liberty. Interestingly enough, an early work (*Mare Liberum,* 1609) attempted to demonstrate that no state could legitimately "own" the sea: Natural law decreed that individualistic competition should prevail in the oceans. The philosophically significant point here is that the principles of law were firmly implanted in human nature and were superior (morally) to any positive law. In fact, they were not the accidental outcomes of self-interested action (the "third world" phenomena), the rationale of which lies in a certain kind of experience, but directly perceived by an active reason. This, of course, is a potentially revolutionary doctrine.

Thus the origins of a "revolutionary" classical liberalism lie in just those rationalistic natural law doctrines of which Hume and Smith were to be so critical—for the idea that reason can determine "law" poses a threat to all existing legal systems. The notion was given a specifically individualistic twist with the Lockean idea of self-ownership: "Every man has a *property* in his own *person.* This nobody has any right to but himself. The labour of his body and the *work* of his hands, we may say, are properly his."[44] This has been taken by later radical libertarians as a definitive and indefeasible objection to all forms of interventionism, since these necessitate the direction of the actions of one person by another, who cannot be his "natural" owner. Such an objection is held to hold irrespective of *any* collective welfare (or utilitarian) advantages that may accrue from intervention.

However, irrespective of the conceptual difficulty surrounding the concept of "self-ownership," it is not clear in a substantive sense that it is sufficient to generate a liberal society. The strong sense of a right in the sense of ownership lies surely at the heart of the Hobbesian structure of an authoritarian society: What I "own" I may surely contract away. Indeed, does this not legitimize "slave" contracts? If these are invalid because one cannot alienate the person, then does it not follow from this that one does *not* fully own oneself?[45]

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What is implicit in the Lockean and all natural law classical liberal positions, is the concept of an *equal liberty*—that the only moral justification of the limitation of a person's liberty lies in the existence of a like freedom of action of others. Thus only a strictly limited government is possible without violating the rights of some. There can, therefore, be no notion of welfare "rights" since the forced redistribution of income from rich to poor violates the equal liberties of the rich. However, this is surely only one of a possible range of possibilities that are consistent with the notion of a right in the sense of personal ownership.

It is from the idea of self-ownership that the *natural* right to property is said to derive. What a person "removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his *property.*"[46] Thus property precedes positive law and, of course, the right to property holds independently of contract. As Frederic Bastiat, the nineteenth century French laissez-faire economist, put it: "Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place."[47] A similar view is held by the contemporary anarcho-capitalist theorist, Murray Rothbard.

It is not easy to substantiate the claim that "mixing" one's labor with a previously unowned object should establish a *right* to it. Or that there can be property that somehow precedes "law." For Hume this was not only a piece of highly rationalistic speculation but also systematically ambiguous. He argued that "there are several kinds of occupation, where we cannot be said to join our labour to the object which we acquire: As when we possess a meadow by grazing our cattle on it."[48] He went on to say that "we cannot be said to join our labour in anything but in a figurative sense."[49] His view was consistent but ultimately conservative: The rules of property cannot be determined by an unaided reason, and their authority is established by a different naturalistic appeal—to sympathy and the imagination. People will tend to approve of private property rules on grounds of general utility.

The utilitarian classical liberals simply do not regard questions of "original entitlement" as important—at least, not in comparison to the question of the overall stability of the property system. In fact, the natural law and natural rights liberals are more consistently *individualistic* since they are more concerned with the question of *who owns what* than with the different issue of determining that system of rules from which anonymous persons may benefit. The latter is still a utilitarian proposition, despite the prohibitions its utterers place on interpersonal comparisons of utility. Nevertheless, "nature" does not provide a convincing theory of property entitlement and the idea that there can be legitimate property independently of law is extremely implausible once it is realized that law in this context does *not* necessarily mean only positive law (in the statutory sense).

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VII

The empirical common-sense notion of man as he is has proved to be an extremely serviceable one in the history of liberal thought. As well as being highly appropriate to *economics,* it is itself an economical concept that makes few demands on our philosophical resources. However, as has been suggested above, not only is the concept of selfish man inappropriate for the communitarian idealists, but also, paradoxically, it may be destructive of the selfish, i.e., liberal, order itself. This is because the liberal order is a public good that it is not in the (selfish) interests of any one person or group to promote. Does not then liberalism require a new concept of man?

In fact, in Smith's theory of morality there is more than a suggestion of Aristotelianism; indeed, the full moral development of the person requires that the narrow confines of mere economizing be transcended. Smith's frequent allusions to the notion of "self-command"[50] as an ethical aim and his constant denunciations of self-deceit suggest a moral idealism that contrasts sharply with the customary soulless calculation of orthodox classical economics.

However, we have to turn to more recent exponents of classical liberal philosophy to find a fully developed Aristotelianism being used to underpin market economics and to legitimize possessive individualism. In Ayn Rand's philosophy there is a strident rejection of the Humean antirationalist defense of the market: "The moral justification of capitalism lies in the fact that it is the only system consonant with man's rational nature, that it protects man's survival *qua* man, and that its ruling principle is: justice."[51]

This is no gaunt and fleshless deontology, since the virtue of capitalism lies precisely in the fact that it fulfills man's natural purpose. That moral purpose is *egoism.* Thus, it is not that, descriptively, man *is* selfish (Rand regrets that this is not, in fact, the case) but that, in her view, he *ought to be.* Thus selfishness is not merely a means to an end, as in Smith's famous observation that "it is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest," but it is the rational end for men. What saves this doctrine from a collapse into nihilism (as is the case, for example, in Max Stirner's[52] egoism) is the absolutely binding nature of rights—and their universalizability.[53]

How can one appeal to "selfishness" for the solution to the liberal dilemma posed above, when surely it is *that* selfishness that caused the difficulty in the first place? However, it is not mere selfishness to which Rand appeals but an elevated form of egoism that condemns living off government and one's fellow citizens as a perversion of man's true nature. The *virtue* of selfishness is exhibited only in market exchanges—forms of social interaction that recognize the right of others to be selfish.

Mention at this point should also be made of Murray Rothbard's explication of an Aristotelian-Lockean anarcho-capitalism. Here the rights component of the

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moral philosophy is pushed to the absolute limits: In Rothbard's view there can be no circumstances that would legitimize the violation of a right. As is well known, in Rand's philosophy[54] there are emergency or "lifeboat" situations in which morality is suspended and a person may do whatever is appropriate for the realization of his natural end, i.e., the pursuit of life itself. In Rothbard's ethics, however, rights are at all times inviolable so that in a *moral* sense a person may not deprive another of what is legitimately his even to save his own life[55] (though, of course, *prudential* considerations may dictate that he do so). The difference arises from Rothbard's derivation of rights from an absolutist theory of self-ownership. Nevertheless, there is an agreement between Rand and Rothbard on the necessity of founding individualist liberal political philosophy on a theory of human nature.

From considerations such as these it is easy to see how a liberal regime may be legitimately established, *contra* Hume, without having to honor *existing* "legitimate expectations," for these may well have been created originally by immoral actions. If there is an objective morality capable of being read off from man's nature, then this would surely sanction the removal of all existing social and economic impediments to the full flowering of that nature. This contrasts sharply with the conservative utilitarian tradition of classical liberalism, from Hume to Hayek, which proclaims the inability of an active reason to discriminate so clearly between the different possibilities of social and economic organization. Indeed, the use of the concept of nature could not be more different: In utilitarian liberalism, rational economic institutions emerge accidentally from the actions of individuals possessing little moral equipment; in the Aristotelian version, they appear to be a direct product of virtuous men.

This is not to say that the Aristotelian version of liberalism is correct; or that all liberal intellectual resources should be invested in encouraging its development from what is, at the moment, only a conceptual embryo; or that we should discard that minimalist concept of man that has proved to be so fruitful in the development of classical liberal thought. Those who follow the orthodox classical liberal tradition, with its unflattering concept of man, claim that because they structure the order of a free society around the *unintended* consequences of human action, the stability of that society does not depend upon the presence of a particularly elevated virtue. In this vision of freedom a variety of forms of moral life are permissible, provided that they are consistent with the universal rules of procedural justice. However, the Aristotelian version of liberalism depends almost entirely on a level of human excellence that it may well be impossible for men as we know them to achieve. The virtual exclusion of unintended consequences theory in Rand, for example, makes the idea of a stable liberal social order very near inexplicable.[56]

The most obvious difficulty lies in the fact that the concept of nature is systematically ambiguous. There is no reason why capitalistic institutions—private

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property, money, and the market—may not themselves be regarded as permanent threats to the full flowering of the human personality, just as Rand regards socialist ones to be. The problem is that since our conceptions of nature are themselves *normative*, the canons of logic do not dictate any one conception as the appropriate foundation stone for a social order. It is for this reason that the quest for the ultimate grounding of the liberal order is likely to continue on lines begun by Hume and Smith, despite the problems alluded to above.

NOTES

1. Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974).
2. It is not my purpose to justify, or even explain in any detailed way, the substantive doctrine of liberalism. It is sufficient to say that I use liberalism in its traditional, pre-T. H. Green, sense to describe a belief in the efficiency and morality of unhampered markets, the system of private property, and individual rights—and a deep distrust of taxation, egalitarianism, compulsory welfare, and the power of the state.
3. Nozick, *Anarchy, State and Utopia*, p. 32.
4. Ibid., pp. 35–42.
5. First published in 1705. See F. Kaye's definitive edition (London: Oxford University Press, 1924).
6. See F. A. Hayek, *Rules and Order*, vol. 1 of *Law, Legislation and Liberty* (London: Routledge and Kegan Paul, 1973).
7. See Edna Margalit-Ullman, "Invisible Hand Explanations," *Synthese* 39 (1978): 263–91. Also, N. P. Barry, "The Tradition of Spontaneous Order," *Liberature of Liberty* 2 (1982): 7–58.
8. This is maintained most forcefully by K. R. Popper in *The Poverty of Historicism* (London: Routledge and Kegan Paul, 1957).
9. Almost all the writers under consideration oppose the conventional utilitarianism, with its assumption that utilities can be measured and thence transformed into an alleged objective social-welfare function. For a critique, see F. A. Hayek, *The Mirage of Social Justice*, vol. 2 of *Law, Legislation and Liberty* (London: Routledge and Kegan Paul, 1976), pp. 17–23.
10. For Bastiat's utilitarian economics, see his *Economic Harmonies* (New York: Foundation for Economic Education, 1979). First published in 1850.
11. Rand's philosophical ideas are contained in novels and essays. See, in particular, *Capitalism: The Unknown Ideal* (New York: Signet, 1967).
12. Rothbard's political philosophy is expressed in *For A New Liberty* (New York: Macmillan, 1978) and *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982).
13. A Macintyre, *After Virtue* (London: Duckworth, 1981); J. Finnis, *Natural Law and Natural Law Rights* (Oxford: Clarendon Press, 1980).
14. For a comprehensive general account of this intellectual period, see Gladys Bryson, *Man and Society* (Princeton: Princeton University Press, 1945).
15. See D. Miller, *Philosophy and Ideology in Hume's Political Thought* (Oxford: Clarendon Press, 1981), pp. 187–205.
16. *Treatise of Human Nature*, edited by P. Ardal (London: Fontana, 1972), Book 3, pp. 191–204. Henceforth *THN*.
17. "Idea of a Perfect Commonwealth," in C. Hendel, ed., *David Hume's Political Essays* (New York: Liberal Arts, 1953), p. 146.
18. *THN*, Book 3, p. 220.
19. *THN*, Book 3, p. 218.
20. *THN*, Book 3, pp. 260–64.
21. *THN*, Book 3, Section 11 *passim*.
22. *THN*, Book 3, p. 253.
23. *THN*, Book 3, p. 256.
24. *THN*, Book 3, p. 216.
25. Macintyre, *After Virtue*, p. 215.

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26. Adam Smith, *Theory of Moral Sentiments*, edited by E. G. West (Indianapolis: Liberty Classics, 1976), p. 506. This was first published in 1759. Henceforth *TMS*.
27. *TMS*, p. 263.
28. Adam Smith, *An Enquiry into the Nature and Causes of the Wealth of Nations*, edited by R. H. Campbell, A. S. Skinner and W. B. Todd, (Oxford: Clarendon Press, 1976), p. 25.
29. Smith, *Wealth of Nations*, p. 531.
30. *TMS*, pp. 380–81.
31. *TMS*, pp. 58–69.
32. *TMS*, p. 208.
33. *TMS*, pp. 47–57.
34. *TMS*, pp. 161–65.
35. *TMS*, pp. 232–60.
36. *TMS*, pp. 163–64.
37. Smith, *Wealth of Nations*, p. 453.
38. Ibid., p. 138. See also, on this page, Smith's comment on property: "The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable."
39. R. L. Meek, D. D. Raphael, and P. C. Stein, eds., *Lectures on Jurisprudence* (Oxford: Clarendon Press, 1978). These are *reports* of Smith's course of lectures.
40. *TMS*, 517–37.
41. F. A. Hayek, "Three Sources of Human Values," in *The Political Order of a Free People*, vol. 3 of *Law, Legislation and Liberty* (London: Routledge and Kegan Paul, 1979), p. 167.
42. For Hume's detailed discussion of property rules, see *THN*, Book 3, pp. 231–44.
43. Translated by F. W. Kelsey (Oxford: Clarendon Press, 1925).
44. *Two Treatises of Government*, edited by P. Laslett (Cambridge: Cambridge University Press, 1960) pp. 328–29.
45. For an illuminating discussion of the history of the complex issues surrounding natural rights, see R. Tuck, *Natural Rights* (Cambridge: Cambridge University Press, 1979).
46. *Two Treatises of Government*, p. 329.
47. Frederic Bastiat, *The Law* (New York: Foundation for Economic Education, 1979). First published in 1850.
48. *THN*, Book 3, p. 234.
49. *THN*, Book 3, p. 234.
50. See *TMS*, pp. 70–74 and 387–425.
51. Ayn Rand, *Capitalism: The Unknown Ideal*, p. 20. Rothbard also bases his arguments on a not dissimilar Aristotelian-Thomist metaphysic of man, although his political conclusions are somewhat different from those of Rand. See his Ethics of Liberty, chaps. 1–3. Also see Norman Barry's discussion in "The New Liberalism," *British Journal of Political Science* 13 (1983):93–123.
52. May Stirner, *The Ego and His Own* (Sun City: Western World Press, 1982). First published as *Der Einzige und sein Eigentum* in 1845.
53. Rand, "Man's Rights," in *Capitalism: The Unknown Ideal*, pp. 320–28.
54. See Rand, "The Ethics of Emergencies," in *The Virtue of Selfishness* (New York: Signet, 1964), pp. 43–49.
55. See Rothbard, *The Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982), pp. 149–53.
56. This objection, however, certainly cannot be made against Rothbard who, while adhering to a Thomist metaphysics, has made many contributions to orthodox liberal economic theory.

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Ayn Rand: Theory versus Creative Life

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All theory, friend, is gray;
Life's golden tree is green.
—Goethe, *Faust*[1]

Ayn Rand occupies a curious position among American novelists: Both her friendly and her hostile critics scarcely regard her as a novelist at all. As an imaginative writer as well as a systematic philosopher, Rand achieved a strikingly unusual combination of roles; her political and moral theories, however, engross virtually all the analytical attention given her work, while the quality of her imaginative writing is almost entirely ignored. Academic analysis of her fiction is rare and is usually focused on her political theories; a similar emphasis on theory appears in the accounts of Rand's work in the popular press. In the libertarian press, she has been analyzed extensively, and with varying degrees of admiration or disappointment, but even writers who judge her work favorably tend to evaluate its success almost entirely in relation to the correctness of the theories it propounds.[2]

Meanwhile, Rand retains her immense popularity with the general audience—a degree of continued popularity that is unexampled among American philosophical novelists. The prevailing intellectual climate has never been favorable to her ideas. Her perennial popularity, therefore, argues that she possessed an impressive degree of purely literary skill. But there are two other, and more common, ways of explaining her success. The first is the prudishly dismissive approach favored by conservatives who assert, as did Russell Kirk, that people enjoy Rand's novels "for the fornicating bits."[3] This isn't much of an explanation: If you want sex-scenes, you can get them more quickly and graphically from a hundred other authors. A second explanation is implicit in many libertarian accounts of Rand: People enjoy her novels because—or to the extent to which—her ideas are individualist.[4] This is at once a likelier and a more troublesome explanation than the conservative one. Many people do like Rand's novels because of her individualist orientation. But how many like them solely for that reason? Would *Capitalism: The Unknown Ideal*

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or *The Virtue of Selfishness* have attracted any audience at all without the prior success of her fiction?[5] Is it assumed that effective literature is merely the result of correct philosophical theory, or that literary skill is of negligible importance when compared with theoretical correctness?

I am afraid that these are, indeed, the unexamined assumptions in a good deal of libertarian writing, not only about the works of Rand, but also about literature in general; and I would suggest that this sort of reverence for theory helps to distance libertarian writing from a wider audience and imparts a grayness and lifelessness to many libertarian discussions of creativity. Rand's own work, unfortunately, provides some good examples of what too often happens when theory strives for mastery over creative life. Her theory of art enables her to identify some of the sources of aesthetic value in her novels, but it leads her into gross undervaluations of many of her greatest achievements. When theory imposes its own shape on her novels, it usually does so to their detriment. Usually, but not always: The aphorism against "all" theory that I have quoted from Goethe considerably overstates the case. Yet there is enough truth in the saying to encourage analysis of the relation of abstract theory to free, creative practice in the works of an author who attached the utmost significance to correct and comprehensive theory.

One of the most important, and most troublesome, elements of Rand's theory of literature is her insistence on morally idealized characters: "The motive and purpose of my writing is *the projection of an ideal man.* The portrayal of a moral ideal, as my ultimate literary goal. . . ."[6] The principle is distinctively Randian. She feels impelled to justify it, however, by resorting to the distinction drawn by Aristotle, in his *Poetics,* between history, which "relate[s] actual events," and imaginative literature, which relates events that "might happen." According to Aristotle, the historian must be concerned with what real people actually did, but the imaginative writer forms his characters to reveal "the kind of thing which a certain type of person would probably or inevitably do or say."[7] Using this "great philosophical principle" for her own theoretical purposes, Rand asserts it to mean that "history represents things only as they are, while fiction represents them 'as they *might be* and *ought to be.*'"[8] But Aristotle is not arguing for idealized characterization. He is merely observing that characters—of whatever moral "type"—should be used to illustrate "general truths" about the way in which various sorts of people behave. At one point in the *Poetics,* he recognizes that an author may properly create characters who are what they "ought to be," but he does not stipulate that an author *should* do so, nor does he make this the basis of his distinction between history and imaginative literature.[9] The kind of hero in whom he is most interested is hardly an example of perfection and success: He is a tragic hero, an essentially good man—"or one better rather than worse"—who nevertheless suffers as the result of some "flaw."[10] This is a kind of character that is common enough in life. Yet it is a kind that is conspicuously excluded by Rand's moral theory of art—with peculiar effects on the picture of life in her novels.

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Many of Rand's most interesting characters have the makings of tragic heroes, yet their tragic possibilities seem almost to embarrass her. Only Gail Wynand, in *The Fountainhead,* is allowed to develop the complex role of a good man who falls by his own error. Other "good" characters, such as Hank Rearden in *Atlas Shrugged,* are usually maneuvered into mending their potentially fatal flaws. Characters who somehow fail to do so are usually discovered not to have been so good, or at least so bright, as one was led to think: The best example here is the hapless Eddie Willers, who is the center of consciousness in the opening pages of *Atlas Shrugged* but finishes in misery and confusion at its end. Even in her first novel, *We the Living* (1936), whose three leading characters are all potentially tragic, Rand finds ways of softening the tragic focus. Her heroine Kira perishes as the victim of Soviet tyranny, and her death is portrayed, with considerable skill, as a psychological triumph over that tyranny. But Kira's status as a morally idealized character causes difficulties in understanding and evaluating the other major characters.[11] Leo Kovalensky, Rand's aristocratic hero, is a pointlessly arrogant, besotted irrationalist; yet because Kira continues to love him, we are urged to regard his spiritual death, not as his own fault, but as entirely the result of Soviet oppression.[12] Andrei Taganov, a much more admirable character by Rand's standards, is the person whom Kira resists loving. A moral idealist, Andrei turns heroically against the communist cause that he served during the revolution, and even prevents the execution of the worthless Kovalensky. Having purged Andrei of his Soviet flaw, Rand nevertheless dooms him to suicide, an act that frees Kira from embarrassing emotional conflicts but leaves her to wonder "whether she had killed him, or the revolution had, or both."[13] It's a good question, and Rand herself seems unsure of the answer.

The problem in *We the Living* is not novelistic immaturity, as some have suspected; the novel contains many rich and telling explorations of its characters' psychology. Rather, the problem is that Rand's broad vision of life is unduly constrained by the moralistic imperatives of her theory. By the time of this first novel, Rand was already operating on the theory of moral idealization that she later codified in *The Romantic Manifesto* (1969)—including the idea that the "*primary* value" of a work of art must be to give people "the experience of living in a world where things are *as they ought to be.*"[14] Translated into the characterization of *We the Living,* this means that someone (Kira) must be enabled to live a morally ideal life, at least inwardly, and that this person must be tainted by no serious flaws, even if the policy results in wavering or improbable judgments and brusque manipulations of associated characters such as Leo and Andrei.

Similar processes are at work in the later novels, and the damage to Rand's characters is sometimes even greater. In the conclusion of *Atlas Shrugged,* Hank Rearden remedies his intellectual errors and lapses into a sexless life in the company of his former lover and her new, superior partner. This is hardly what one would expect from the tensely sensual psychology of Rearden, as Rand has painstakingly created it. Her imposed solution merely saves Rearden from a tragic

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ending and his former lover, Rand's heroine, from any suffering that might result from it. It is not Rearden's individual psychology but Rand's theory about the proper objects of sexual love that expresses itself in the long speech by which he registers his cheerful acceptance of his new situation.[15] Bound by her own moral-aesthetic theory, Rand refuses to permit her characters to develop all the various types of significance, tragic or otherwise, that their richly observed psychology seems to require. The effect, ironically, is to reduce the stature and independence of characters whom Rand wishes to render large and free.

Rand's difficulties in matching theory and practice are still more clearly evident in her treatment of mythology. In her first novel there is little mythology, but its influence is unmistakable in the later three: *Anthem* (1938), whose hero is bluntly named "Prometheus"; *The Fountainhead* (1943), in which Howard Roark, creator and destroyer, subtly but insistently acquires the characteristics of Prometheus, Vulcan, and an angel of final judgment; *Atlas Shrugged* (1957), whose hero recalls not only Atlas and Prometheus but also such artists of miraculous power as Orpheus and Amphion.[16] By discovering ways of using a mythological technique in her treatment of modern subjects, Rand fashioned for herself an extremely valuable tool, one that often does much to give her novels a grandeur and intensity of life.

Again, however, theory circumscribes her practice. In *The Romantic Manifesto,* she offers a surprisingly brief and oblique justification for the use of mythology:

> *Art is the indispensable medium for the communication of a moral ideal.* Observe that every religion has a mythology—a dramatized concretization of its moral code embodied in the figures of men who are its ultimate product.[17]

Having associated myth with the embodiment of moral ideals, Rand turns directly to the moral uses of characterization:

> Many readers of *The Fountainhead* have told me that the character of Howard Roark helped them to make a decision when they faced a moral dilemma. They asked themselves: "What would Roark do in this situation?"—and, faster than their mind could identify the proper application of all the complex principles involved, the image of Roark gave them the answer. . . . Such is the psycho-epistemological function of a personified (concretized) human ideal.[18]

In the course of her argument, Rand makes a characteristic assertion that "the primary focus of art is metaphysical, not ethical. Art is not the 'handmaiden' of morality, its *basic* purpose is not to educate, to reform or to advocate anything." She even makes a bitter reference to "the sterile, uninspiring futility of a great many theoretical discussions of ethics."[19] But her own theory, apparently in some difficulty at trying to explain her exuberant use of mythology, proposes to compel her mythological characters to endure a detailed and possibly very petty and impertinent ethical inspection by their audience. Since Rand sets no limits to the

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theory that her characters should be able to help her readers with their moral dilemmas, she encourages the idea that art functions to help its audience make decisions about virtually all such problems.

Although this particular idea has had an unfortunate influence on the intellectual independence of some of Rand's admirers, one finds little indication that she had it specifically in mind when she created Howard Roark. By the time of *Atlas Shrugged,* however, she had obviously taken her theory about the importance of moral idealization very far in this direction. *Atlas Shrugged* is virtually a catalogue of moral problems that John Galt and his associates are set to solve, and the imposed solutions sometimes play strange tricks with Rand's development of characters. It may—to cite two examples—be ethically allowable, in Rand's system, for Galt and Dagny Taggart to keep Rearden in suspense about Dagny's fate while he is risking his life to search for her; it may be allowable for Dagny to regard her devoted friend Willers with near indifference when he no longer has an important purpose in her world. If any of Rand's readers face moral dilemmas like Dagny's, this may help them. But Rand's way of maneuvering her characters as illustrations of a detailed moral theory works against the sense of largeness and vitality that their mythological associations otherwise provide for them.

The seriousness with which Rand takes her characters' moral problems is not, in itself, a source of aesthetic weakness. In fact, it is a source of considerable aesthetic strength. It adds to *Atlas Shrugged* a solidity and a unity of concern that it might not be able to derive from any other source. Rand's ethical preoccupations transform the adventures of the Taggart railroad into something more than background for a glamorous heroine. The railroad becomes the locus of moral choice for a character whose nature is revealed and developed by the type of decisions she makes in her work. The fortunes of the railroad, which are in large part determined by Dagny's ethical decisions, provide a unifying and suspenseful story that symbolizes the destruction and future regeneration of the whole of industrial civilization.

But even Rand's nicely designed plot shudders under the moral and theoretical weight she would have it bear. There is a nervous multiplication of minor characters who have some moral problem to illustrate but who are insufficiently developed to seem at all like individual people. Then, of course, there is Galt's speech. In *The Fountainhead,* Roark delivers a relatively brief, rhetorically effective speech that serves the double purpose of stating his essential ideas and of getting him acquitted in his climactic courtroom battle. Galt's speech, by contrast, is a lengthy theoretical development of ideas that have already been made clear, and it is more a burden than a help to the plot. Here Rand does what she reproves Victor Hugo for doing—interrupting a narrative in order to introduce an essay.[20] Rand violates her own literary sensibilities, and it doesn't work.

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This is only one occasion on which Rand's interest in theory deflects attention—her own as well as her readers'—from the principal sources of her very great merit as an imaginative writer. The sources with which I am most concerned are, first, Rand's talent as a satirist, and, second, her talent as a creator of images.

Published discussions of Rand's career generally omit all reference to her comic and satiric skill. She is known as a preacher, a novelistic spoilsport, and—despite her contentions to the contrary—a narrow propagandist.[21] For this her acerbically theoretical literary essays are partly to blame. Despite her frequent allusions to the joy embodied in great works of art, her essayistic style is more guardedly solemn than usual on the issue of comedy and satire. In *The Romantic Manifesto,* practically all she is willing to say about the issue is that "*evil*" is "worth re-creating" only "as a foil" to "the *good*," and that "humor is not an unconditional virtue. . . . To laugh at the contemptible, is a virtue; to laugh at the good, is a hideous vice. Too often, humor is used as the camouflage of moral cowardice."[22] This is the Rand who, in the 1959 reprinting of *We the Living,* made sure to change her heroine's "funny short summer dresses" to "short summer dresses."[23]

What is surprising, in view of such solemnities, is the wealth of comedy, from broad farce to black humor, to be found in her novels. At one extreme are Rand's expertly staged symposia of clowns, gatherings of figures like Wesley Mouch, Tinky Holloway, Jimmy Taggart, and Mr. Thompson, the Head of State in the satirically conceived Republic of *Atlas Shrugged:*

> Mr. Thompson, the Head of the State, was a man who possessed the quality of never being noticed. In any group of three, his person became indistinguishable, and when seen alone it seemed to evoke a group of its own, composed of the countless persons he resembled.[24]

At the other extreme are single moments that combine horror with a grotesque comedy, as in the bizarre self-revelations of *The Fountainhead*'s villain, Ellsworth Toohey, Rand's greatest satiric creation:

> Ellsworth was fifteen, when he astonished the Bible-class teacher by an odd question. The teacher had been elaborating upon the text: "What shall it profit a man, if he shall gain the whole world, and lose his own soul?" Ellsworth asked: "Then in order to be truly wealthy, a man should collect souls?"[25]

Rand's villains sometimes have more vitality than her heroes, perhaps because they are not expected to conform to the demands of an idealistic theory, perhaps because Rand was actually more fascinated by evil, of which she had long experience, than by an ideal good which no one ever encountered. However that may be, she allows certain of her villains—Peter Keating, the failed creator, the ruined Adonis; Ellsworth Toohey, the baroquely wicked genius—to attain the rank of mythic figures, symbols of vast territories of wasted human life. These are figures that are imposing to the imagination even while arousing laughter and scorn.

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It is instructive to compare Rand's achievement in satire with that of another American satirist, Sinclair Lewis, whose work she respected.[26] A number of Rand's minor characters resemble the fools who populate Lewis's novels, and in some cases they may ultimately be derived from them. But Lewis rarely develops a satiric figure who is vital, complex, unpredictable. When Lewis wishes to portray a villain capable of precipitating a crisis of serious proportions, he creates Buzz Windrip of *It Can't Happen Here*—but there is an enormous distance between his coarse satire of Windrip and the rich, dark comedy of Toohey's portrayal. From a reading of Rand's theories, however, few people would suspect that she would have been interested in creating Toohey.

And few would suspect her of the interest and skill in imagery that one finds in her novels. Consider the way in which Toohey is first presented to view. Catherine Halsey, his naive young niece, describes a frightening vision:

> I couldn't hear a thing, not a sound in the living room, and there was that paper rustling, so softly, like somebody being choked to death. And then I looked around and . . .and I couldn't see Uncle in the living room, but I saw his shadow on the wall, a huge shadow, all hunched. . . .[27]

I have chosen this one image, with difficulty, from among the hundreds of powerful images in Rand's novels, images that are striking, compelling, yet fully responsive to her philosophic purposes. One of her aims in *The Fountainhead* is to show that evil can never win complete success; another is to show that the fundamental sins are intellectual ones. It is, therefore, the word-filled paper in Toohey's home that suggests the thought of death to Catherine, who eventually is ruined, "choked to death," by Toohey's philosophy. And it is, therefore, as a shadow that Toohey first appears: He is a force that casts a giant shadow over *The Fountainhead,* yet he is a force that will be able to leave no deeper mark on Howard Roark than a shadow leaves on the surfaces it temporarily obscures.

Rand is an expert at constructing elaborate systems of imagery that define her characters and dramatize her themes. She is a master both of the concise and telling image and of the long, bravura passage—one thinks of the somber magnificence of her lengthy description of Petrograd in *We the Living,* Part Two, or of the explosive First Run on the John Galt Line in *Atlas Shrugged.*[28] Throughout her career, she is intensely concerned with images, a fact that is strikingly evident in her revisions of *We the Living* for its 1959 edition. Although Rand claimed that she revised the book in order to correct her early mistakes in using English as a literary language,[29] it is often assumed in libertarian circles that her verbal changes resulted mainly from changes in her philosophy. Rand does make some significant "ideological" revisions, as when she tries to reduce the violence of the novel's contempt for the "masses." For instance, in the original version, Andrei observes that "we can't sacrifice millions for the sake of the few," and Kira replies, "You can! You must. When those few are the best." In the 1959 edition, her declaration is replaced by a question: "Can you sacrifice

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the few?'' A little later, Kira's remark that she knows ''no worse injustice than justice for all'' is replaced by the more rational ''I know no worse injustice than the giving of the undeserved.''[30]

But the majority of Rand's hundreds of revisions are fastidious tinkerings with sentence rhythms and images—changes that usually have little to do with her ideology or with her acquisition of the English language. About her imagery she is minutely conscientious: ''dusk'' becomes ''semi-darkness,'' an official's ''stamp'' becomes a ''rubber stamp,'' and ''little bridges'' become ''delicate bridges.''[31] If this degree of concern is any indication, it seems clear that Rand devoted a huge proportion of her life as working novelist to problems of imagery. It is doubly surprising, then, that her theoretical writings give only slight attention to sensuous imagery. In *The Romantic Manifesto,* she treats imagery as a subset of ''style,'' notices that every author has his own style, and points out that an author's stylistic choices express his particular ''sense of life.'' She applauds stylistic clarity and precision.[32] This is all very well, but it hardly reflects the importance given to sensuous imagery by her practice as a novelist.

Rand's recommendation of her favorite novel is also characteristic of an aesthetic theory at odds with her practice. Her choice is *Calumet ''K''* (Merwin and Webster, 1901), a story about the skill and perseverance shown by an employee of a contracting firm who succeeds against great odds in constructing a grain elevator on the Chicago waterfront.[33] In the introduction that she wrote for a reprinting of this novel, Rand fully recognizes its deficiencies of structure and conception; what she likes about it is its finely competent and successful hero, who—except in his sense of humor—somewhat resembles her own morally idealized characters. The strange thing about *Calumet ''K,''* in view of Rand's own practice, is its virtually complete lack of vivid sensuous imagery—a deficiency that she does not discuss. The novel is all story and hero—all skeleton and brain, no flesh at all. In this sense, a less Randian book could scarcely be imagined. Her recommendation of *Calumet ''K''* is one more example of her difficulty in reconciling her working sense of what art is with the demands of an ethically based artistic theory.

One of Rand's most interesting descriptions of an object of art appears in *The Fountainhead,* at the moment in which Peter Keating contemplates Roark's drawing of the Enright House:

> He did not need to see the caption or the brusque signature in the corner of the sketch; he knew that no one else had conceived that house. . . .There was [a] severe, mathematical order holding together a free, fantastic growth . . .an incredible variety of shapes, each separate unit unrepeated, but leading inevitably to the next one and to the whole. . . .[34]

This image is, in its way, a powerful statement of aesthetic theory, a theory that in its emphasis on the uniqueness of the artist's accomplishment is fully appropriate to Rand's individualist ethic. According to this image, uniqueness is manifested

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in "free, fantastic growth" as much as in severely intellectual order. Some of the finest aspects of Rand's art are "free, fantastic growths": her novels' profuse imagery, their exuberant satire, their splendid proliferation of villains and grotesques. Yet these are features to which her unduly severe theory gives little notice. Her constrained and constraining theory is of limited use in revealing what is really individual and "free" about her own art.

While I was preparing this essay, Rand's novels accompanied me to bus-stops, airport waiting rooms, and many late-night restaurants; in such places, nothing was more common than for strangers—students, waiters, business people—to see what I was reading and begin enthusiastic conversations about her work. These people were not libertarians, only the proto-libertarians that the movement's theorists have constantly tried to reach. Rand had clearly impressed them with her ideas, but it was clear that she had done so chiefly by her practical success in transforming ideas into colorful and inventive literature, and not by her ability to transform literature into a theoretical guide to ethical conduct. This does not mean that her ethical theory adds nothing of importance to her art. It does suggest, however, that Rand the working novelist succeeded better than Rand the theorist. Rand's work still has much to offer the individualist movement, and not the least of its gifts may be an awareness of the danger that abstract theory may pose to the "incredible variety of shapes" in which the creative mind can express itself.

NOTES

1. Johann Wolfgang von Goethe, Faust, part 1, 11. 2038-39, in *Goethes Werke* (Munich: Beck, 1976), 3:66 (my translation).
2. Similar observations about the critical attention given Rand's theories, rather than her literary achievement, are made by Paul Deane, "Ayn Rand's Neurotic Personalities of Our Times," *Revue des langues vivantes* 36 (April 1970):125–29; and John Cody, "Ayn Rand's Promethean Heroes," *Reason* 5 (November 1973): 30–35. Cody reviews the critical literature, as does Robert Greenwood, "Ayn Rand and the Literary Critics," *Reason* 6 (November 1974):44–50. Analyses of Rand during the past ten years have continued to emphasize her theoretical positions (or public activities), as is evident in such academic studies as Philip Gordon, "The Extroflective Hero: A Look at Ayn Rand," *Journal of Popular Culture* 10 (Spring 1977):701–10—an attack on Randian individualism—and in the interesting debate over the significance of Rand's career that emerged in individualist journals following her death; see, for example, Roy A. Childs, Jr., "Ayn Rand and the Libertarian Movement," *Update* 2 (April 1982):4–5, 7, and *Update* 2 (May 1982):4–5, 9, 11; Bill Birmingham, "Rand: The Conscience of a Conservatarian," *Update* 2 (May 1982):6–7; Justin Raimondo, "Ayn Rand, 1905–1982," *Libertarian Vanguard* 4 (June 1982):7–8; and Don Feder, "*Atlas Shrugged* at 25—An Appreciation," *On Principle* 1 (October 4, 1982): 68–70. Valuable work on Rand has recently been done by feminist critics: Mimi R. Gladstein, "Ayn Rand and Feminism: An Unlikely Alliance," *College English* 39 (February 1978):680–85; Judith Wilt, "On *Atlas Shrugged*," *College English* 40 (November 1978):333–36. These two essays are, however, concerned more with Rand's theories of exploitation, sex, and love than with the quality of her literary enterprise.
3. Kirk, as quoted by William F. Buckley, Jr., "Ayn Rand, R.I.P.," *National Review* 34 (April 2, 1982):381.
4. This not unreasonable assumption is also frequently made explicit, as by Jerome Tuccille, *It Usually Begins with Ayn Rand* (New York: Stein and Day, 1971), esp. p. 19; or by Raimondo,

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"Ayn Rand, 1905–1982." It is advanced even in conservative Terry Teachout's grudging acknowledgment of Rand's importance: "Farewell, Dagny Taggart," *National Review* 34 (May 14, 1982):566–67.

5. Jeff Riggenbach, "The Disowned Children of Ayn Rand," *Reason* 14 (December 1982):58, notes that "it is the atypical reader of Rand who goes on from the novels" to her nonfiction books.
6. Rand, "The Goal of My Writing," in *The Romantic Manifesto: A Philosophy of Literature* (New York: World, 1969), p. 161.
7. Aristotle, *The Poetics*, in *Aristotle: On Poetry and Style*, trans. G. M. A. Grube (Indianapolis: Bobbs-Merrill, 1958), chap 9, p. 18.
8. Rand, "Goal of My Writing," p. 169.
9. Aristotle, *Poetics*, chap. 25, pp. 54–56.
10. Ibid., chap. 13, p. 24.
11. In her foreword to the novel's second edition, Rand insists on Kira's role as a moral exemplar, as the embodiment of Rand's own "convictions" and "values": *We the Living*, 2nd ed. (New York: New American Library, 1959), p. ix. For the convenience of readers, I cite the readily available paperback printings of all Rand's novels except the first edition of *We the Living* (New York: Macmillan, 1936).
12. Kira reflects, with respect to Leo, that "it was I against a hundred and fifty million people. I lost." She later tells Leo that she has "nothing to forgive" him for: *We the Living*, 1st ed., pp. 543, 545; 2nd ed., pp. 425, 427.
13. Rand, *We the Living*, 1st ed., p. 537; 2nd ed., p. 421.
14. Rand, "Goal of My Writing," p. 171. Friedrich Nietzsche, discussing Greek mythology (and writing in a less moral vein than Rand), makes a remark that may have some relevance to the godlike characters of Rand's fictions: "The gods justified human life by living it themselves—the only satisfactory theodicy ever invented": *The Birth of Tragedy from the Spirit of Music*, in *The Birth of Tragedy and the Genealogy of Morals*, trans. Francis Golffing (Garden City, N. Y.: Doubleday, 1956), p. 30.
15. Rand, *Atlas Shrugged* (New York: New American Library, 1957), pp. 796–800. I am indebted to Murray N. Rothbard (correspondence, January 21, 1984) for important insights into the literary effects of Rand's theory of love.
16. On Rand's handling of mythology, see also Cody, "Rand's Promethean Heroes."
17. Rand, "The Psycho-Epistemology of Art," in *The Romantic Manifesto*, p. 25.
18. Ibid., pp. 25–26.
19. Ibid., pp. 26, 25.
20. Rand, "Basic Principles of Literature," in *The Romantic Manifesto*, p. 65.
21. Apparently showing some sense of humor about her reputation, Rand declared, "I'm not a propagandist, believe it or not": interview reported in Clare D. Kinsman, ed., *Contemporary Authors*, 13–16, first revision (Detroit: Gale, 1975), p. 655.
22. Rand, "Goal of My Writing," p. 167; "Bootleg Romanticism," p. 126, in *The Romantic Manifesto*.
23. Rand, *We the Living*, 1st ed., p. 256; 2nd ed., p. 206. It is interesting that in the first-edition text, Kira dislikes "all things weighty and solemn" (p. 44); in the second edition, published when Rand's own tone was becoming increasingly weighty and solemn, Kira is made to adhere explicitly to Rand's aesthetic theories; now she rebels against "the weighty, *the tragic*, the solemn" (p. 42; emphasis added).
24. Rand, *Atlas Shrugged*, p. 499.
25. Rand, *The Fountainhead* (New York: New American Library, 1971), p. 299.
26. For Rand on Lewis, see esp. "Psycho-Epistemology of Art," p. 24; "What Is Romanticism?" p. 107, in *The Romantic Manifesto*. One reviewer of *The Fountainhead* noticed general similarities between that work and Lewis's *Arrowsmith*: N. L. Rothman, "H. Roark, Architect," *Saturday Review* 26 (May 29, 1943):30–31.
27. Rand, *The Fountainhead*, p. 152.
28. Rand, *We the Living*, 1st ed., pp. 285–91; 2nd ed., pp. 226–31; *Atlas Shrugged*, pp. 228–37. Recently I asked two experts in modern literature to read the Petrograd description and comment on its quality, without informing them of its author's name. Both pronounced it the work of some "important" and "distinguished" writer. One of them concluded from its style that

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it was not the work of any well-known Russian, but nevertheless remarked that it was as excellent as any description in Russian literature. Both were amazed, and impressed, to find that it was the work of Rand.

29. Rand, foreword to *We the Living,* 2nd ed., p. viii.
30. For Rand's ideological revisions, compare *We the Living,* 1st ed., pp. 92–95, 499–502, with 2nd ed., pp. 79–81, 390–92.
31. Rand, *We the Living,* 1st ed., pp. 135, 45, 288; 2nd ed., pp. 112, 43, 228.
32. Rand, "Basic Principles," pp. 75–77; "Art and Sense of Life," pp. 43–44, 51–53, in *The Romantic Manifesto.*
33. Rand, introduction to *Calumet "K,"* reprint ed. (New York: NBI Press, 1967), pp. i–ix.
34. Rand, *The Fountainhead,* pp. 234–35.

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Enforced Equality—Or Justice?

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I

In the Preface to *The Mirage of Social Justice*, the second volume of his trilogy on *Law, Legislation and Liberty*, F. A. Hayek explained that "circumstances have contributed to delay the publication of the second volume of this work."[1] The chief circumstance was "dissatisfaction with the original version of the central chapter . . . in which I had tried to show for a large number of instances that what was claimed as demanded by 'social justice' could not be justice because the underlying consideration (one could hardly call it a principle) was not capable of general application." Hayek was dissatisfied because he had now become convinced . . . that "the people who habitually employ the phrase simply do not know themselves what they mean by it, and just use it as an assertion that a claim is justified without giving a reason for it."[2]

I propose to challenge this conclusion, arguing that Hayek's first thoughts were more nearly correct. The expression "social justice" does appear to be employed by a great many people as almost, if not quite, synonymous with the word "equality," which is then construed as involving neither equality before the law nor equality of opportunity but equality of income or of outcome. But now, in that understanding, what is claimed to be demanded by social justice certainly is not and could not be justice.

Justice is an essentially backward-looking notion, concerned with people getting and being able to keep their several and presumably often different deserts and entitlements—deserts and entitlements we have antecedently acquired by being what we are and have been, and by doing or refraining from doing what we either have done or have refrained from doing. The Procrustean ideal, on the other hand, the ideal of a universal equality of condition necessarily enforced and maintained by an all-intrusive socialist state is, equally essentially, forward-looking. Regardless of what people are or have been, have or have not previously done, their future condition is to be made (ever more if never perhaps perfectly) equal.[3]

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Protagonists of this Procrustean ideal would, if they were both clear-headed and frank, sacrifice the propaganda advantages of presenting it as a kind of justice. Instead, and taking a leaf from the book of the orthopsychiatrists and other self-styled penal progressives, they would mount a bold and radical onslaught on the very notion of justice—denouncing the whole business as antique, gothic, reactionary, and—what is the truth—irreducibly backward-looking.[4]

II

That social justice and the Procrustean ideal are often thus identified can perhaps best be seen by considering the extraordinary tickertape reception accorded to John Rawls's *A Theory of Justice,* for this author, his different and more ambitious title notwithstanding, proclaims from the beginning that "our topic . . . is that of social justice."[5]

In his Critical Notice in the *New York Review of Books,* the lifelong British socialist Stuart Hampshire wrote: "I think that this book is the most substantial and interesting contribution to moral philosophy since the war, at least if one thinks only of works written in English. It is a very persuasive book, being very well argued and carefully composed." It presents, Hampshire continues, "a noble, coherent, highly abstract picture of the fair society, as social democrats see it. . . . This is certainly the model of social justice that has governed the advocacy of R. H. Tawney and Richard Titmuss and that holds the Labour Party together."

Again, and similarly, the author of one of the first volumes in a new International Library of Welfare and Philosophy sees the implications of the present equation, likes them, and construes this as a license to help himself to the premise from which they follow. Having sketched a Rawlsian account of (social) justice as a (qualified) equality, he remarks that one "reason for linking equality and justice is that within the theory of justice one can provide the necessary moral premises for adopting the principle of equal welfare as a prescriptive recommendation."[6] (Why should we resist the temptation to quote Bertrand Russell, who once remarked that the Method of Postulation had all the well-known advantages of theft as compared with honest toil?)

Hayek himself appears to have been blinded by charity to the significance of this welcome, for, with his usual irenic generosity, he refrains from settling accounts with *A Theory of Justice,* "because the differences between us seemed more verbal than substantial."[7] Yet it would be easy to extend indefinitely the list of quotations from British socialist sources showing some sort of near if not always perfect equation between the establishment of a general equality of welfare and a meeting of the demands of (social) justice. Such persons also take "equality" to be virtually synonymous with "equity": An equitable distribution for them, therefore, just is an equal distribution.

For example: A leading Labour Member of Parliament, Mrs. Barbara Castle once made a very characteristic statement in a debate on a Queen's Speech: "Our

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complaint against the Government, and in particular the Prime Minister, is that brick by brick they have set out to create an unjust society."[8] (The Prime Minister thus arraigned was, of course, Edward Heath.) A Fabian Society review of the two subsequent Labour administrations is full of more of the same. Nick Bosanquet and Peter Townsend proclaim in their Editorial Preface to *Labor and Equality*,[9] a Preface reprinted on the back cover, "that the Labour Party can and should light a flame in a world of injustice and inequality." Contributor after contributor to this volume speaks of "socialist canons of equality and social justice" and of "a more socially just and equal society."[10] One author goes so far as to assert—without attempting to explain either what this might mean or why we should accept it as true—that, in particular, "racial equality requires a society which is equal in all respects."[11] Perhaps the strongest evidence that we are dealing with an equation is provided by David Piachaud's harshly confident denunciation: "The Conservative government"—this time that of Margaret Thatcher—"is renouncing the search for social justice."[12] For Piachaud's point must surely be, what is perfectly true, that instructed Conservatives reject the Procrustean enforcement of equality; rather than, what would be a well-nigh Hitlerian Big Lie, that we all despise and disown old-fashioned, without prefix or suffix, justice.

III

In Section I, I said what I proposed to do. In Section II, I tried to show, against Hayek, that many people do give a fairly definite meaning to the expression "social justice." Now it is time to start to fulfill the undertaking to show that what is claimed as "demanded by 'social justice'" certainly is not and could not be justice.

The greatest difficulty in this task is to find any strong and direct opposing argument to confront. For there seems until only yesterday to have been no general disagreement about the concept of justice, though plenty about what in particular justice requires. In Book I of *The Republic,* for instance, before going on to develop his own hopefully persuasive redefinition, Plato scripts Polemarchus to offer what any contemporary would surely have accepted as a correctly descriptive account of the meaning of the Greek word translated "justice". It is, Polemarchus suggests, "rendering to everyone their due."[13] Their due, of course, will be their several and presumably often different deserts and entitlements—moral deserts and moral entitlements if we are talking about morals; legal and legal if we are talking about the positive law.

The same theme is taken up and repeated by the Roman lawyers. Thus in that grand epitome, the *Institutes* of Justinian, we can read that the mark of the just man is *"constans et perpetua jus suum cuique tribuere"*—a constant and perpetual will to assign to each his own. More recent treatises have often cited a fuller Latin sentence, adding two further clauses before that crucial and traditional "to

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each his own." This runs: *"Honeste vivere, neminem laedere, suum cuique tribuere"*—"To live honestly, to injure no one, to assign to each his own."

This fundamental agreement about the concept of justice—about the correct descriptive definition of the word "justice"—has not extended to embrace a similar happy agreement either about what people's several deserts and entitlements actually are or about what are the proper bases of desert and entitlement. It is thus possible, putting the same point in another terminology, to share the same concept but nevertheless to have different and conflicting conceptions of justice. But surely any conception that either rejects the notions of desert and entitlement or holds that those of everyone are in all respects, and without regard to any differences between individuals, equal, cannot be a conception of *justice.*

But, if this is obvious, why do so many nowadays identify the Procrustean production of equality of outcome with the pursuit of justice? There are, I suggest, three main reasons. First, justice does indeed demand one sort of equality, although that sort is not this sort. Second, these people never address themselves to questions about the meaning of the word "justice." Instead they are content merely to parrot a cant expression, the use of which shows them to be (in the United States) acceptably "liberal" and (in the United Kingdom) "not at all right-wing." Third, they want to secure the hooray word "justice" as the attractive brand label for their favored policies, in much the same way that Soviet Germany prefers to call itself, and be called, the German Democratic Republic.

The first of these three reasons can be disposed of in very short order. Certainly any rules of justice, like any rules at all, must, to be rules, be applied in the same way, and hence equally, to all those to whom they are applicable. But this is a very different thing from saying that, to be just, you have to treat everyone in the same way, in all respects without exception. Nor is there any doubt but that justice requires equality before the law, in the sense that all offenders must be treated in the same way with no one privileged because of color, relationship to the dictator, or anything else of a similar nature. But any system of what purported to be criminal justice that refused to treat offenders in any way differently from nonoffenders would—as Kant might have said—contradict itself as a system of criminal justice.

Again, equal consideration should not be mistaken to imply that everyone has an equally legitimate claim to equal shares of everything—although today, it seems, it often is. For what equal consideration has traditionally meant, and should continue to mean, is that everyone is equally entitled to his day in court. But what the court will then decide is bound to be, in different cases, different and maybe, as between one litigant and another, very unequal indeed.

The third of the three reasons will eventually be disposed of with similar dispatch; for, once the full traditional meaning of the word "justice" has been reestablished, it will become immediately obvious that the Procrustean who misrepresents himself as pursuing justice incurs costs that are bound to prove

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altogether unacceptable. So the next job is to attempt to enforce the contention that that meaning is what it is, bringing out some of the most relevant implications. Perhaps the most effective way of tackling this job is to confront the challenge of *A Theory of Justice.*

IV

Before beginning to engage that philosophical enemy more closely, let us treat ourselves to one wide-ranging comment. Just as Plato in *The Republic* developed a uniting and justifying ideology for the absolute rulers of his supposedly ideal state, so Rawls too has, in his own somnambulistic and pedestrian way, done the same thing for that New Class which sees its own most unequally powerful and most unequally prosperous future in the enforcement, through the ever expanding welfare-state machine, of equality for all others.

Now to detail. Readers of the Sherlock Holmes stories will remember the remarkable thing about Watson's hearing the dog barking in the middle of the night. That remarkable thing was that Watson did not hear it, because no dog barked. The similarly remarkable thing about the definition of "justice" that Rawls provides is that he provides none. Nor does he offer any reasons for rejecting all traditional accounts. Indeed this may well be the first work pretending to be a treatise on justice that is not, even in over 600 pages, able to find room to quote any of those previously mentioned variations on the theme of *suum cuique tribuere.* Instead this extraordinarily unlinguistic former chairman of Harvard's Department of Philosophy takes credit for an assumption that "allows us to leave questions of meaning and definition aside and to get on with the task of developing a substantive theory of justice."[14]

As everyone interested in such matters has known for some time, Rawls sets about this chosen task by reviving the notion of a Social Contract. What we have to do now is to bring out the nature and significance of certain assumptions built into either the content or the context of that hypothetical and not historical contract. Rawls himself, as well as most of his critics, have failed to appreciate either that these assumptions are being made and/or how crucial they are to the entire enterprise.

(a) First, there is the assumption that all present and potential property really belongs to the collective and is therefore available for distribution or redistribution, subject to no legitimate prior claims, at the absolute discretion of that collective. This is a pretty big and fundamentally socialist assumption. Yet it is wholly typical of the unselfcritical parochialism of Rawls that, since he never even notices that he is making it, he finds no room to essay any justification.

Indeed he goes so far as to state that "justice as fairness"—his own brand-label for his system—is neutral as between a private, pluralistic economic order and total, state-monopoly socialism.[15] Yet he still assumes that all the wealth either

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already produced or in the future to be produced within the to-them-unknown national frontiers of the hypothetical contracting parties is, as has been said, available for collective distribution, free of all prior claims to individual ownership. Most remarkably, yet it seems never elsewhere remarked, this collectively owned wealth must be taken to include all those services that are the actions of individuals.

(b) Consistent with this original, totally socialist assumption, Rawls also takes it absolutely for granted throughout that any particular rights or resources enjoyed by any individual either are or ought to be allocated collectively. Consider, for instance, two statements: first, that "the justice of a social scheme depends on how fundamental rights and duties are *assigned*";[16] and, second, that "the chief primary goods *at the disposition of society* . . . liberty and opportunity, *income and wealth* . . . are to be distributed equally. . . ."[17]—unless, he will later add, an unequal distribution is positively advantageous (and not merely not disadvantageous) to the least advantaged (not individual but) group. Rawls is thus, from the very beginning and throughout, making the same enormous socialist assumption as is made in the blurb of Michael Harrington's *The Twilight of American Capitalism:* "A notable study which analyzes reasons why sharp inequalities in the sharing of *the nation's wealth* are inevitable outcomes of American capitalism"[18]

(c) A third major assumption, which both determines that the terms of the hypothetical contract must be Procrustean and thus disqualifies the result as *A Theory of Justice,* actually is argued for elsewhere. Typically, however, Rawls never notices either that or how this assumption both removes all possible grounds for individual self-respect—something he says he values greatly[19]—and lays his own theory open to what he himself rightly insists is the great objection to any utilitarianism—that "it does not take seriously the distinction between persons."[20]

This third assumption decisively eliminates from consideration all possible grounds for individual differences in desert and entitlement. It ensures that the only deserts or entitlements any individual could have must be universal human deserts or entitlements—the deserts appertaining to original sin, perhaps, or the rights claimed by the American Declaration of Independence.

So what is this crucial third assumption? To appreciate its nature and full significance, we have to approach it slowly and rather indirectly. Remember that the hypothetical contractors in the Rawls system are supposed to negotiate behind "the veil of ignorance."[21] And what they have collectively to choose are "the first principles of a conception of justice which is to regulate all subsequent criticism and reform of institutions."[22]

In these days, and after the captivating frankness of his confession that "we want to define the original position so that we can get the desired solution," it should come as no surprise that these Rawlsian contractors cannot but "acknowledge as the first principle of justice one requiring an equal distribu-

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tion.'' Indeed, Rawls adds, ''this principle is so obvious that we would expect it to occur to anyone immediately.''[23]

To bring out the nature of the enormous third assumption by which this conclusion becomes ''so obvious'' to Rawls, we must recognize the stated main purpose of proceeding behind ''the veil of ignorance.'' It has been usual for commentators to discuss this comprehensive blinkering as having been stipulated to secure impartiality. This, as Richard Hare reminded us in his critical notice,[24] makes the whole business no more than a dramatization of the colorless Humean appeal to the ideally impartial spectator.

Now, certainly, Rawls does mention this as one purpose: ''We should insure further that particular inclinations and aspirations, and person's conceptions of their good, do not affect the principles adopted.''[25] But the stated primary aim is altogether different, and altogether preposterous: ''Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in the quest for political and economic advantage, we are led to these principles. *They express the result of leaving aside those aspects of the social world that seem arbitrary from the moral point of view.*''[26]

In the end it emerges that Rawls will have to include under the rubric, things ''that seem arbitrary from the moral point of view,'' everything that distinguishes one individual from another; everything, that is, that any individual has done or another has not done, as well as everything that one individual is and another is not. For only by such wholesale discounting of all the differentiating characteristics of every individual as, allegedly, ''morally irrelevant'' can he maintain the supposedly quite obvious ''first principle of justice, one requiring equal distribution.'' Without that discounting he would be laying himself open to pressure from those who do indeed ''take seriously the distinction between persons.'' For we want to respect some of the different and hence often (horrid thought!) unequal claims urged by and on behalf of different people; claims grounded in differences between what those different people severally have done, or are.

Rawls never spells out in full how much he would have us include under the descriptions ''the accidents of natural endowment and the contingencies of social circumstance . . . those aspects of the social world that seem arbitrary from the moral point of view.'' Had he done so, he could scarcely have failed to realize the absurdity of offering his ''justice as fairness'' *either* as a conception of justice; *or* as a reform alternative to all versions of utilitarianism that fail ''to take seriously the distinction between persons''; *or* as a system within which we must and can place a very high value on individual self-respect.

What Rawls does is present some unsound argument for the crucial conclusion that these accidents and contingencies are indeed ''arbitrary from a moral point of view.'' He starts from the observation that natural endowments are not themselves deserved. From this innocuous truth he draws two invalid references:

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first, that what these endowments make possible cannot, therefore, be itself a proper basis of desert; second, because they are not deserved, therefore they must be, in some scandalous way, undeserved.

This second invalid inference is taken to establish the "principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for."[27] Such compensation is provided by the Difference Principle. This, Rawls tells us, "represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. Those who have been favoured by nature, whoever they are, may gain from their good fortune *only* on terms that improve the situation of those who have lost out."[28]

As Rawls sees it, "The natural distribution of abilities and talents," and also presumably of disabilities and ineptitudes, is the outcome of a "natural lottery." And, furthermore, "Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances."[29]

Two further objections against this common and apparently seductive line of argument have to be raised, however briefly.

1. First, the lottery analogy is applicable only where there are antecedently existing participants hoping to increase their resources by some (for them) lucky spin of the wheel or fall of the die. Something else has to be either part of me or a legitimate property of mine if I am to be in a position to make acquisitions, whether these are deserved or undeserved or—as Aristotle might have said—not-deserved. Again, I have to have some independent existence as an individual and to possess at least some properties that are, for better or for worse, essentially mine if I am either to be fairly or unfairly allocated anything or to have any basis for individual self-respect—as opposed, perhaps, to some sort of 1844 Marxist collectivist self-respect as a species being.

2. Second, Rawls never explicitly entertains the possibility of undeserved or not-deserved entitlements. Yet he is no more able than anyone else to avoid admitting or affirming the moral legitimacy of some such claims. Is he not, after all, himself acknowledging what surely must be not-deserved or undeserved entitlements both (a) when he assumes that all the wealth produced or to be produced in that to-them-unknown territory is a collective asset, which his contractors have the right to distribute among themselves at their absolute discretion, and (b) when they, and he, "acknowledge as the first principle of justice one requiring equal distribution"?[30]

V

Suppose that someone now objects, as some have objected, that Rawls has a different conception of justice, that his is not "an entitlement theory." Certainly

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he has a different conception, so different that what Rawls calls justice is not justice at all. A conception of justice, to be such, must be a conception of what people's several deserts and entitlements are, and/or of what are the proper and legitimating bases of desert and entitlement. But Rawls, as we have seen, has no room for notions either of desert or of not-deserved entitlement, while he categorically denies the moral relevance of any of those various characteristics in respect of which one individual differs from another, and upon which all differences of desert or of not-deserved entitlement cannot but be grounded.

Plato's Socrates wisely concludes Book I of *The Republic* by remarking, sadly, that "so long as I do not know what justice is, I am hardly likely to know whether or not it is a virtue, or whether it makes a man happy or unhappy."[31] We might wish that Rawls had paid some attention to this warning. Instead, as we have seen, he rashly preferred "to leave questions of meaning and definition aside and get on with the task of developing a substantive theory of justice."

Someone here could respond that all the objections deployed above have been merely verbal, not substantive. Yet this would reveal grotesque misunderstanding. The differences between the objector to and the protagonists of "equality and social justice" are a matter merely of words only in the silly sense in which the difference between a verdict of "guilty" and "not guilty" is a difference of a single word. The point is that different words carry different implications; and the differences between such different implications may sometimes be, as in the latter example, a matter of life and death. There are various very solid, though not by the same token respectable, reasons why Rawls—and many others much nastier and more worldly-wise than Rawls—want to present their cherished Procrustean norms as the mandates of (social) justice.

In the first place, of course, there is the enormous propaganda advantage of presenting new and alien ideals in old and well-loved bottles. And what Procrustean does not wish to see himself, and to be seen, as a sort of Shane figure out of a good old-fashioned, traditional Western, a man dedicated to doing the justice "which a man has to do."[32]

In the second place, if the Procrustean can get us to accept that his norms are indeed the imperatives of justice, he will have acquired a knock-down answer to an objection that might otherwise be embarrassing: "By what right are you proposing to employ the machinery of the state to impose on everybody, or more often it is everybody else, your own personal ideal?" For everyone is ready to allow that what is prescribed by (moral) justice may properly, though not always prudently, be enforced by (legal) law.

Let us conclude with a third observation, the pressing home of which holds out our only hope of persuading the Procrusteans to abandon their false, proud claims to be promoting (social) justice. If justice really did require and warrant an equal distribution, then everyone would be entitled to no more and no less than an equal share (tautology). But now all the Procrusteans of my own acquain-

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tance are, on these assumptions, rather conspicuously underdeprived. They are all, to speak less delicately, in possession and enjoyment of considerable amounts both of capital and income, to say nothing of power and position, over and above those equal or nearly equal shares to which alone they are, on their own accounts, justly entitled. In accordance with their own constantly reiterated principles, therefore, such excesses constitute property stolen (by keeping) from others worse off than themselves. This unlovely picture is not the one they want either to see themselves or to show to the rest of us!

NOTES

1. F. A. Hayek, *The Mirage of Social Justice,* vol. 2 of *Law, Legislation and Liberty* (London: Routledge and Kegan Paul, 1976), p. xi.
2. Ibid., p. xi.
3. Compare my *The Politics of Procrustes* (London: Temple Smith; N.Y.: Prometheus, 1981), passim.
4. Dr. Karl Menninger, for many years the doyen of American orthopsychiatry, in *The Crime of Punishment* (New York: Viking, 1968), goes so far as to say: "The very word 'justice' irritates scientists. No surgeon expects to be asked whether an operation for cancer is just or not. No doctor will be reproached on the grounds that the dose of penicillin he has prescribed is less or more than justice would stipulate. Behavioral scientists regard it as equally absurd to invoke the question of justice" (p. 17). For more of the similar, and for some old-fashioned criticism thereof, see my *Crime or Disease?* (London: Macmillan, 1973).
5. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971; Oxford: Clarendon Press, 1972), p. 7.
6. A. Weale, *Equality and Social Policy* (London: Routledge and Kegan Paul, 1978), p. 32.
7. Hayek, *The Mirage of Social Justice,* p. xiii.
8. *Hansard* for 6/XI/72, 845, 55.
9. Nick Bosanquet and Peter Townsend, eds., *Labour and Equality* (London: Heinemann, 1980).
10. Ibid., pp. 131 and 228; and compare pp. 61 and 227.
11. Ibid., p. 151.
12. Ibid., p. 184.
13. Section 331E. It is noteworthy that in *The Open Society and Its Enemies* (London: Routledge and Kegal Paul, 5th ed., 1966), vol. 1, p. 247, Sir Karl Popper remarks that Plato's persuasive redefinition does "not . . . touch the essence of what man generally mean by justice," but instead sums up a conception of "social justice."
14. Rawls, *A Theory of Justice,* p. 579.
15. Ibid., pp. 265 ff.
16. Ibid., p. 6. Italics added.
17. Ibid., p. 62. Italics added.
18. Michael Harrington, *The Twilight of American Capitalism* (New York: Simon and Schuster, Touchstone Books, 1977). Italics added.
19. Rawls, *A Theory of Justice,* p. 440.
20. Ibid., p. 22.
21. Ibid., p. 136.
22. Ibid., p. 13.
23. Ibid., pp. 150–51.
24. Richard Hare, "Critical Study," *Philosophical Quarterly* 23 (April 1973): 144–55; 23 (July 1973): 241–52.
25. Rawls, *A Theory of Justice,* p. 18.
26. Ibid., p. 15. Italics added.
27. Ibid., p. 100.
28. Ibid., p. 101. Italics added.

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29. Ibid., p. 74.
30. An even more powerful challenge has been launched by Robert Nozick in his scintillating critique, *Anarchy, State and Utopia* (New York: Basic Books; Oxford: Blackwell, 1974). Suppose that half of the population was born with two eyes and half with none, would the aficionados of "equality and social justice" want to say that it was an imperative of justice that all the two-eyed must be forced to make one of their eyes available for transplanting into the empty sockets of the no-eyed; on the grounds that bodily parts, just like abilities and disabilities, ought to be regarded as a collective asset, available for redistribution at the absolute discretion of the collective? Even if there are Procrusteans so ruthlessly consistent that they would take this hard line, would they not still have to say that it was justice precisely because the no-eyed have a necessarily not-deserved entitlement to an eye?
31. Section 354C.
32. Hugh Stretton goes so far as to dedicate *Capitalism, Socialism and the Environment* (Cambridge: Cambridge University Press, 1976) to Four Just Men: "Apart from any influence their writings may have had those four must by now have planned, directed or managed several billion dollars' worth of three or four countries' capital resources, mostly to the purpose of reducing inequalities" (p. vi).

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Nozick and the Individualist Anarchist

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Robert Nozick, in *Anarchy, State, and Utopia*[1] presented his by-now-famous view that "a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified."[2] He went on to say that only such a state is justified. Since then, the view has been frequently presented that a more extensive state than the one proposed by Nozick is warranted[3]—as has the view that only a *less* extensive state,[4] or no state at all, is morally permissible. When such an antistatist, or anarchist, view is presented, however, rarely has its advocate also been an advocate of capitalism, i.e., an individualist anarchist. But occasionally that does happen. In this paper I propose to criticize Nozick from the individualist anarchist point of view and show that although he has challenged the classical arguments of the individualist anarchist, the anarchist has a reply.

Nozick and the individualist anarchist believe in a set of moral principles. I shall refer to them as, respectively, the Libertarian Principle, the Kantian Principle and the Lockean proviso. The Libertarian Principle requires that we shall never initiate force, or be guilty of fraud, theft, the violation of contracts, or other infringements on private property rights. The Kantian Principle requires that we never use individuals as mere means, but always as ends. Nozick's Lockean proviso requires that whatever economic exchanges occur between individuals, none are left worse off than he was before the exchanges were made. Thus, all exchanges must be, to use Nozick's word, "productive." That is, both sides must benefit, or, at least, not be harmed by the exchange.

The individualist anarchist point, simply put, is that no state can satisfy these moral principles, as all states arise through processes that violate them; hence, no state is justified. To see this, we must understand how the term *state* is used. The term is used in the way recommended by Max Weber. For Weber, the state is the sole rightful authorizer of physical violence in a geographical area. It is this monopoly character of the state that makes it, from the individualist anarchist point of view, immoral.

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The moral legitimacy of the state will depend on the moral legitimacy of any agency that claims to have a monopoly on coercion in a particular area and that initiates force against any actual or potential competition, inasmuch as the state is just such an agency. Another such agency is Nozick's "dominant protective association." A dominant protective association is a self-defense league that has a de facto monopoly on the use of violence in a particular territory. As we shall see, if I can show the illegitimacy of the dominant protective association, I will have shown the moral illegitimacy of the state. Now, the individualist anarchist has no objections to a self-defense league, as long as it follows the Libertarian Principle, the Kantian Principle, and the Lockean proviso. Nozick, in his book, argues that such a self-defense league could evolve into a state without violating any of these principles. I will not rehearse all of his arguments here. But I will look at the following scenario.

Let us call the de facto monopoly, firm A. Now, suppose a group of independents either contract with each other or with another party to form protection agency B. What can A do? According to Nozick,[5], it can reserve the right to pass judgment on firm B's guarantees of due process. These would be the methods that the firm uses to determine when to deter or punish the actions of a moral agent. If A finds the means by which B enforces rights to be unreliable or unfair, A can (i.e., possesses the power to) prohibit B from forming. It can likewise prohibit B's clients from using self-help enforcement of rights even if there is simply a *risk* of this enforcement being injurious to its clients.

At this point, Nozick's argument looks very much like the traditional archist's.[6] Acting out of self-defense, the archist argues, the individuals in a region can organize into an association with the power to protect their rights. This protection will include the assumption of monopoly powers, as that is the best way to exercise this power of self-defense.

But the individualist anarchist's reply is as follows. Acting on his behalf, I ask, What has happened if A prohibits competition? On my view:

(1) The independents' right of self-defense has been violated.
(2) Free exchanges have been repressed, namely, those between the independents and firm B.
(3) The monopoly has coercively restrained the free exercise of the right of contract. Thus, it has violated the Libertarian Principle, which permits all voluntary exchanges.
(4) The Kantian Principle has also been violated, as the independents are not being treated as ends. If they were, I should think, they could not be stripped of their right of self-defense. They are being treated solely as means to the security of firm A's customers.

Thus, A has secured its status as a state (for surely, that is what it is) by morally impermissible steps, and the state is thus immoral.

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In a definite advance in the debate between the individualist anarchist and the archist, Nozick argues that criticisms such as mine are too quick. He admits firm A has transgressed against the independent's rights. But he asks:

> *Are others forbidden to perform actions that transgress the boundary* [i.e., violate individual rights]. *or encroach upon the circumscribed area, or are they permitted to perform such actions provided that they compensate the person whose boundary has been crossed* [i.e., whose rights have been violated]"[7]

Nozick's answer is that, yes, they are, under certain circumstances. But let us pause and reflect upon the term, *compensation.* Nozick defines it in the following way: "Something fully compensates a person for a loss if and only if it makes him no worse off than he otherwise would have been; it compensates person X for person Y's action A if X is no worse off receiving it if Y had not done A. (In the terminology of economists, something compensates X for Y's act if receiving it leaves X on at least as high an indifference curve as he would have been on, without it, had Y not so acted.)"[8]

I take the following to be an example of compensation. (This example of compensation is mine and not Nozick's.) Jones contracts with Smith to work for him. Jones knows the job is dangerous, so he offers Smith a certain amount of money as insurance, to be paid if certain kinds of injuries occur. Smith, taking into consideration the benefits of having the job versus not having the job, the pay Jones is offering him, etc., decides that he prefers $\$n$, the amount Jones is prepared to insure him for, to the alternatives, i.e., not working, not having a salary, etc. The next day, Smith reports to work, and his ears get caught in a mechanical rice picker and are seriously injured. He collects $\$n$ from Jones. All things considered, for Jones $\$n$ is at least as good as (i.e., equivalent in utility to) uninjured ears, and uninjured ears are at least as good as $\$n$. That is, Jones is as high on an indifference curve with mangled ears and $\$n$ as with uninjured ears and no compensatory payment. Moreover, the transfer of money from Jones to Smith was a result of payment both sides agreed to.

Compensation should not be confused with a transfer of economic goods I shall call "restitution." An example of restitution is as follows. Frank slips and breaks his neck. But he is on Howard's property. Frank sues Howard. Howard does not agree to pay at first, but some third party (characteristically, but not necessarily, the state) forces him. However, the payment is not what Frank or Howard would have agreed upon had they negotiated the matter beforehand. Restitution can be characterized as follows: (1) the parties did not agree to $\$n$ as the amount of the payment, or (2) one party did not wish to pay it, or the other receive it. There are perhaps endless variations on restitution as well as on compensation. For brevity's sake, I shall not go into them. But in all cases, what is present in restitution is that at least one party to it is forced into a transaction against his preferences. The economic goods that changed hands, in short, did so through force and not

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by trade. Nozick ignores this distinction between compensation and restitution. It will play an important role in my reply to him.

Nozick justifies the transition from the competitive, i.e., stateless, protection market—the market the individualist anarchist is content with—to the state by invoking the principle of compensation, which is stated in this way:

> those who are *disadvantaged* by being forbidden to do actions that only *might* harm others must be compensated for these disadvantages foisted upon them in order to provide security for the others.[9]

More important, under certain restricted conditions, compensation will justify or at least excuse the violations of the individual's rights involved in any disadvantaging deprivation of his liberty or property. In particular, under certain conditions, a firm or agency may violate rights (and the Libertarian Principle, the Kantian Principle, and the Lockean proviso) and in so doing form a state if it compensates the individuals whose rights are violated for their losses.

We shall recall that firm A has (1) stripped the independents of their right of self-help enforcement, and (2) initiated force, in violation of the Libertarian and the Kantian Principles, to prevent their exercise of the right to freely contract with firm B. Even Nozick admits that a border-crossing (as he so delicately puts it) has occurred.

But firm A will compensate the independents for their losses. For the deprivation of their liberty, firm A offers them what seems to it the equivalent in value, namely, protection at a lower cost or no cost at all. If they do not accept this service, firm A reserves the right, in order to protect its clients, to coerce the independents into acquiescence. But this initiation of force is no longer enough to make the formation of a state intrinsically immoral, according to Nozick,[10] as the independents have been compensated for the rights violation.

As an initial observation, let me point out that the compensation of a rights violation, of course, does not render morally permissible the actions involved in such a violation. If a rapist were to compensate his victim (say, with money), she would be doubly injured, and he would have compounded his crime, not excused or justified it. But more significantly, I think, is that Nozick so far has been confusing what is possible and rightful under a system of compensation with what is possible under a nonmarket system of restitution. Let me explain myself. If Jones were to ask Smith for x, a property of Smith's, and Smith accepted, provided Jones gave him $\$n$, we could reasonably infer that in terms of Smith's preferences, x was equal to or greater than $\$n$ in value. We have an exchange that benefits both sides. Either one of two things has happened here. Either $\$n$ was greater than x, and Smith was more than compensated, or $\$n = x$, and Smith was (merely) compensated. Let us stick to the latter case.

The nature of the exchange when firm A forces the independents to accept its suzerainty, with reimbursement $\$n$, is different in kind from the Smith and Jones

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case; it is one of restitution. Let us imagine, for example, that the state is offering an independent, call her Joan (after Joan of Arc, a notorious independent), an economic good, namely, security and protection from the war of each against all. But Joan refuses. Firm A then offers to purchase Joan's liberty of choice in this matter for $\$n$. Joan again refuses. Firm A then declares that it finds unacceptably high, the risk of Joan's self-help enforcement or her contracting with a competing protection agency, given the possibility of Joan's using unreliable or unfair enforcement mechanisms. Thus, firm A prohibits Joan from defending herself, abridges her right of contract, and restrains trade. Joan's rights (and the Libertarian and Kantian Principles) have been violated. The state (for now it has become, not a firm, but a state) gives Joan $\$n$ (or the equivalent in lower-priced or no-cost service), which was its highest offer for Joan's liberty. Has Joan been compensated?

Compensation would leave Joan at least as high on an indifference curve, given her present condition, as her prior condition. That is, compensation would make Joan indifferent as to whether she is in her present condition or in her prior condition. In other words, she would have as much utility now, as a client of firm A (a subject of the state) as she did as an independent. But obviously $\$n$ was not compensation. Otherwise, firm A would not have had to coerce Joan. It seems sensible to suppose that if $\$n$ would have compensated Joan for leaving the state of nature, then there would have been an amount $\$n+x$ which would have made it rational for her to voluntarily join firm A's family of clients. There are three possibilities here.

(1) There was no amount $\$n+x$. But then there could be no amount $\$n$ (the amount of compensation).
(2) There was an amount $\$n+x$, but the monopoly was unable to pay it.
(3) There was an amount $\$n+x$, but the monopoly was unwilling to pay it.

In the first case, Joan has suffered a loss, as she has not been compensated. That is, she has less utility as a client (subject) of the monopoly (state) than as an independent. In cases 2 and 3, firm A could not make its services beneficial to Joan, so it forces her to accept its terms. This then is the scenario that Nozick would have us believe is morally permissible:

Firm A takes Joan's right of self-protection away from her. This is to protect A's clients from the (mere) possibility that Joan might harm them. As Joan is, by hypothesis, a free, rational, utility-maximizing agent, presumably if she would have benefited from having her rights taken away from her, she would have voluntarily surrendered them.

We must assume that Joan would prefer a state of the world where she would still have her rights unmolested. This is S. She is presently in a state of the world where she cannot realize these benefits. This is S'. So in terms of her own personal utility calculation, the worth of S' is less than the worth of S. The net loss involved, we shall label L.

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Firm A then offers to protect Joan for price $\$n$. Joan being otherwise defenseless, due to A's initiation of force against her boundary, is compelled to accept. As Joan would not have paid $\$n$ except under duress, in terms of her preferences $\$n$ represents a loss to her. (Anytime Joan has to give out money for benefits she finds spurious, we may infer a loss equal to, if not greater than, the price of the spurious benefit.)

The exchange, which presumably results in benefits to A, results in loss, $L+m+n$, to Joan, i.e., the cost to Joan of her violated rights, the cost of the forced acceptance of the monopolist's services, and the payment she is compelled to make for these services. We thus have an unproductive exchange vis-à-vis Joan's personal utility calculation, based as it is on her preferences about alternative states of the world. This violates the Lockean proviso and the Kantian Principle.

Thus far, I have claimed in my reply to Nozick that the application of the principle of compensation in the relevant cases of nonmarket restitution is equal to the null set. Nozick's excuse for rights violations thus fails even to apply to the relevant cases. Were it possible to compensate the individual for the transgression against her rights involved in the formation of the state, no coercion would be needed. For we could simply offer the individual $\$n+x$, the amount of payment sufficiently greater than $\$n$, the amount of compensation, to make the individual prefer acceptance of firm A's offer to nonacceptance. If the firm is unable or unwilling to do this, then it claims a right prohibited by the Kantian Principle. Namely, it wishes to use the individual without treating her as an end. It does so by offering her no acceptable profit in the exchange. The exchange between the independents and firm A—the exchange that produces the state—is unproductive vis-à-vis the independents' utility calculation; it leaves them worse off than they would have been had the exchange not taken place. As they violate the Lockean proviso, the steps that lead up to the formation of a state remain immoral.

At this point, Nozick could reply that the above scenario is not the only one by which a state could form. There are two logical possibilities here. One is that a state forms against the will of independents. This is the scenario that we have been considering. And, so the response goes, we are indeed right that under this scenario, no state is justified. The other is that the state forms with unanimous consent—the state need not initiate force to get independents to accept it; for there are no independents. In the presence of unanimous consent, we need not infer that individuals are left worse off than they were before the state formed (if they were, they would presumably be independents); hence, there is no violation of the Lockean proviso. And since the state is only protecting those who want to be protected, no clear violation of the Kantian or Libertarian principles has occurred. A state that forms with unanimous consent could still be justified; our criticism does not touch it. Hence, some state is justified; the individualist anarchist, who believes that no state is justified, is wrong.

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One obvious way to respond to this is that no state has ever formed in this way, nor does it seem likely that one ever will. Thus, the scenario in which the state is unjustified is in fact the only one in which states arise. Moreover, for the state to be just, the unanimous consent to the state's protection would have to be perpetual. For as soon as any one disagreed with it and became an independent, one of two things would happen. Either the state would allow that person's independence, or it would not. If it allowed the person his independence, then there would no longer be a monopoly of force in the area, for two agents would have the right to use force—the "state" and the independent. Thus, there would no longer be a state. If the state suppressed the independent, we would be right back in the situation where the state is initiating force against independents. And we have seen the illegitimacy of that kind of state. Thus, no known or future state will be legitimized.

In fact, the state is, historically, in the same moral position as a protection racket. The protection racketeer forces protection on his clients. If they refuse, then they will be physically assaulted. Even if the racketeer "compensated" his clients by giving them protection at lower cost than they might otherwise get, his actions are still immoral. Thus, if I am right, the steps that bring about the state (any state) involve violations of Nozickean moral principles and rights violations, and Nozick's principle of compensation does not justify the state. Despite Nozick's defense, the state, to the individualist anarchist, remains morally impermissible.

NOTES

1. Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).
2. Ibid., p. ix.
3. One proponent of a more extensive state is John Rawls. See his *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
4. Following Nozick's usage, I am employing the term *state* in the way recommended by Max Weber. See H. H. Gerth and C. Wright Mills, trans., eds., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1970), p. 78.
5. Nozick, pp. 88–89.
6. I am indebted to Tibor Machan for the term *archist*, which denotes an advocate of a minimal state.
7. Nozick, p. 57. Italics in original.
8. Ibid.
9. Nozick, pp. 82–83. Italics in original.
10. Nozick, pp. 57–85, 88–90, 96–113.

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The Philosophy of Immigration

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In recent years, with the increasing respectability of "applied philosophy" in the academic world, more and more philosophers have been writing extended treatments of specific public issues and offering recommendations as to how, morally speaking, these issues should be resolved. In this essay I shall review the state of the debate about one rather narrow issue that has just begun to receive some of this attention—the ethics of immigration restriction. But first I want to offer a few general reflections about the "applied turn" in recent philosophy.

Most applied philosophy is applied moral philosophy, in which ethical theory is brought to bear on a specific moral issue, usually one of a public nature. But the applied philosopher is embarrassed by the lack of a generally accepted ethical theory. The obvious way to back up his recommendation as to what should be done would be to combine a statement of the facts of the case with a statement of general ethical principles, from which his recommendation would follow. But if his ethical theory is controversial among his colleagues, and will appear novel and dubious to his nonphilosophical readers, then it would seem that the philosopher has misplaced his efforts. He should have been thinking and writing about ethical theory rather than about a practical issue. His primary aim should have been to prove the correctness of his theory, which must be more important than any one specific application.

On the other hand, the existence of a comprehensive and noncontroversial ethical theory would make the philosopher largely superfluous in debates over public issues. Once the ethical theory is grasped, the only remaining questions are empirical; once we know what in general is right, the only doubt is about the facts of the situation confronting us. In this area the philosopher qua philosopher has nothing to offer and must defer to social scientists, historians, journalists, etc.[1]

The upshot is that the applied philosopher, when dealing with public issues, is driven to uneasy compromises. Since he cannot make any controversial assump-

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tions in ethical theory (else he should devote his efforts to establishing those assumptions rather than to the specific moral problem), he must strive to make use only of widely accepted moral rules. These will tend to be somewhat vague and at a middle level of generality, rather than clear-cut and at the deepest theoretical level. And he must hope that his perusal of secondary sources has adequately informed him of the empirical facts. The problem of learning the relevant facts is especially acute when one deals with public issues whose resolution may affect a whole society, or even the whole world. The philosopher must become an amateur social scientist in order to deal intelligently with public policy questions, yet he cannot become more than an amateur without abandoning his primary vocation.

Still the "applied turn" in philosophy is to be more welcomed than deplored, in my view. As a class, philosophers seem more willing to raise, and seriously attempt to settle, moral issues than are other broad classes of people. This may be due in part to their professional training and in part to the cast of mind that led them to choose philosophizing as a profession. Philosophers are more willing to follow an argument where it leads, without being scared away by considerations of "political realism." They are used to dealing unapologetically with hypothetical cases. Social scientists and journalists usually avoid prolonged and serious grappling with broad moral issues. Thus, applied philosophers are doing something that ought to be done, and that probably will not be done with intellectual seriousness if *they* do not do it. We may wish they did it better, but at least they are trying to do something worthwhile.

Let me turn now to the topic of immigration restriction. This is very widely practiced in the modern world, and one might expect its legitimacy in general to be rather uncontroversial, whatever questions might be raised about the details. In fact, however—as Timothy King has pointed out in a recent article in *Ethics*[2]—almost any plausible ethical theory will tend to cast grave doubt on the moral propriety of restricting immigration. With so much that can be said against it, the real philosophical question turns out to be, What weighty reasons can be given in justification of the practice? Or, to put it another way, Is there a *moral* issue here at all, rather than simply a common immoral practice?

King passes in review the moral theories that seem to him to be at least respectable; let us follow him in this, beginning with utilitarianism. The Principle of Utility says nothing about nations or citizenship; "every*one*," not "every *citizen of my country*," is "to count as one and none as more than one." Now there is no reason to think that national restrictions on migration will maximize global utility, and pretty good reason to think otherwise. So global utilitarianism is opposed to immigration restriction. Rawls's Difference Principle, that inequalities are acceptable if and only if they tend to the betterment of the worst off (as measured by their enjoyment of Primary Goods), refers to the worst off *people*, not to those of my *fellow citizens* who are worst off. Some doubt might be entertained on this point, since Rawls tends to apply his contractualist procedure for

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generating rules to national units rather than globally.[3] But there is really no justification for this, and whatever plausibility belongs to contractualism in general or the Difference Principle in particular belongs to it only as a global theory and not as a nationalistic one. Now it is only a little less clear that the worst off will benefit from freedom of movement than it is that the population as a whole will benefit.[4] So the Difference Principle leads to the rejection of immigration restriction. Nor does there seem to be any other contractualist argument for restrictionism. If I, behind a veil of ignorance as to my personal characteristics and place in society, had to choose an immigration policy for the world, I would certainly choose an open policy. Finally, a human rights or natural rights theory will specify rights that people have qua people, not qua citizens of this or that state. If, as seems plausible, people have rights to freedom of movement and freedom of association, then the case against immigration restriction is virtually airtight.

These rejections of immigration restriction on the basis of utilitarianism, contractualism, and human rights theory, respectively, have been extremely brisk, and there may be more that needs to be done to make them conclusive. But it seems clear that the advocate of restriction has an uphill battle to make an intellectually respectable case for his position. The main difficulty is that all the familiar basic ethical theories are cosmopolitan rather than nationalistic: They do not recognize nationality as a basic moral category. As a result, not only immigration restriction but most of the activities of a modern national government are called into question when confronted with basic moral theory. Some of these activities may in the end be able to survive the questioning, but it seems likely that many will not.

Still, let us give the restrictionist every chance to defend his position and, more generally, to defend his preference for a world divided into nations with powerful governments. The defense must probably reject human rights, as we have seen. Even if we ignore the rights of foreigners, immigration restriction will still be ruled out for violating the citizens' rights to freedom of association and to the disposal of their own property.[5] For simplicity, let us suppose that the restrictionist's ethical theory is something along the lines of utilitarianism. The restrictionist, then—unless he rejects my argument (above) that global utilitarianism forbids immigration restriction—must distort his utilitarianism by claiming that people ought to weigh the interests of their own fellow-citizens more heavily than those of foreigners. He must also claim that the beneficial effects of immigration on the immigrants are more than outweighed by the harmful effects to the citizens of their country of destination. Let us examine the former point first.

As Charles Beitz points out in a recent article in *The Journal of Philosophy:*

> "The priority thesis [the thesis that, morally speaking, 'compatriots take priority'] might arise at either an intermediate or a foundational level of moral thought. At the intermediate level, the thesis derives from reasoning at a deeper

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> level where everyone's interests are treated equally. At the foundational level, the thesis asserts that the interests of compatriots should be given priority even when, all things considered, this cannot be justified by any principle of equal treatment.''[6](593)

Beitz finds it implausible, as do I, that starting from a cosmopolitan ethical basis, we will be able to add empirical facts that will justify such aspects of national sovereignty as the power to restrict immigration. But, implausible or not, I think that this is the only hope for the restrictionist.

Beitz thinks there is more hope of introducing nationalism successfully at the foundational level. He quotes the following remark of Thomas Nagel:

> ''There is some public analogue to the individual's right to lead his own life free of the constant demand to promote the best overall results, but it appears in the relations of states to one another rather than in their relations to their citizens: states can remain neutral in external disputes, and can legitimately favor their own populations—though not at any cost whatever to the rest of the world.''[7]

Though Nagel, and Bernard Williams, who has put forward similar remarks in his critique of Smart,[8] probably did not intend this, they sound in places as if they were offering a criticism of utilitarianism from the point of view of egoism (a heavily qualified egoism, to be sure). However that may be, Nagel is saying that just as individuals may give more weight, perhaps vastly more weight, to their own preferences than to those of other people, so nations (through their governments) may give more weight to their own interests than to those of other *nations;* and that this is a fundamental moral principle, or close to it.

But on all counts this attempted defense of nationalism seems to me a complete failure. Beitz himself points out that the ontological difference between people and states makes the individualist version of Nagel's principle plausible and the statist version implausible. People have their own separate identities, their own agency, which they express by forming and pursuing their own projects and commitments; they have something that Williams calls ''integrity,'' which seems insufficiently respected by the extreme utilitarian demand that they always act so as to maximize a good that is largely externally determined. But the same cannot be said for states, which are merely aggregations of such individuals, lacking individuality and agency except in some metaphorical sense. I would add that the ontologically secondary status of states makes any moral principle that refers to states an unlikely candidate for the role of ''basic moral principle.''

Beitz suggests, however, that a qualified egoism *for individuals* may support the priority thesis, by justifying the individual citizen in rejecting the demands of his government that he sacrifice his own interests for the sake of badly-off foreigners. Unfortunately, the citizen has just as much reason to reject demands that he sacrifice *for his fellow citizens;* so this line of thought fails to provide a distinction between citizens and foreigners, and thus it fails to yield the priority thesis.[9]

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Since nationalism at the foundational level is so implausible, let us reconsider the possibility of introducing it at the intermediate level of generality. The standard way of doing this is by appeal to a social contract—an *actual* (though perhaps tacit) contract, not a *hypothetical* one. If the citizens or residents of a country have promised each other to weigh each other's interests more heavily than the interests of foreigners, then the general obligation to keep promises seems to establish that they should give priority to their compatriots. The argument is not conclusive: *Immoral* promises carry little or no obligation, and it has not been established that the promise to give compatriots priority is morally acceptable. Furthermore, some have doubted that the moral force of promises can be explained on a utilitarian basis. But the real objection to the social contract justification of nationalism is that most people have never signed such a contract or made such a promise. That they have not done so *explicitly* is obvious; and, according to John Simmons' persuasive analysis, neither have they done so *tacitly*.[10] Therefore social contract theory cannot establish the nationalistic priority thesis.

Apart from social contract theory, the most sustained attempt to introduce nationalism at the intermediate level of generality has been made by Michael Walzer. In a work on morality and international politics, *Just and Unjust Wars* (1977), he had previously put forward a view that critics from the left labeled "Statism without Foundations."[11] More recently, in an article in *Boundaries*,[12] reprinted with changes in his *Spheres of Justice*,[13] he has tried to supply those foundations. In seeking to justify immigration restriction, however, Walzer naturally becomes involved in defending national sovereignty in general.

Why should the world be divided into nations, and how much and what kind of power should the government of each nation have? Walzer's answer is that *cultural homogeneity* within a larger *diversity* is the good attained by such division, and the government should exercise enough power to maintain that state of affairs. Thus a government must have the power to exclude culturally different foreigners by the restriction (possibly even total prohibition) of immigration.

It is hard to believe that the argument is meant seriously. Are governments completely mistaking their proper function when they engage (as they are wont to do) in "cultural exchange" programs with other governments? Admittedly, such programs are of doubtful legitimacy, but can they be *directly contrary* to the true function of government? On Walzer's showing, governments should be busy jamming foreign radio signals and preventing foreign trade. The governments of Eastern Europe, for instance, have been grossly derelict in their duty by not protecting their citizens against American cultural imperialism in the form of movies, blue jeans, Coca-Cola, and Western ideas about economic organization and political freedom.

No doubt one can find communities where a majority will express a preference for traditional ways and for insulation from foreign contacts. But note that if such feelings were unanimous, there would be no need for governmental immigration controls—no immigrant could gain a foothold in a community where *no one* would

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have anything to do with him.[14] So there will always be a nonisolationist minority in any realistic case, and their wishes must be taken seriously (as Walzer does not). Furthermore, preferences formed in ignorance of the alternatives must be regarded as suspect; isolated people who say they prefer continued isolation probably do not know what they are talking about. Walzer absurdly undervalues the benefits of cultural exchange, of peaceful interaction between different sorts of people, and he underplays the frustration of minority preferences that would be inevitable if a culturally homogeneous majority were able to dictate, through its control of the government, the enforceable standards of the national culture.

More generally, Walzer charges the government with the task of seeing to it that different kinds of things (including citizenship itself) get distributed in accordance with "appropriate" criteria. *Spheres of Justice* is a discussion of these various criteria; but Walzer does not even try to show that an active role for national governments in any of these kinds of distribution is either necessary or sufficient to bring about the desired result.

Still, the picture Walzer paints of national solidarity has its appeal. In his ideal nation the people share a common language and religion, and common traditions of all kinds. They partake of an ideology of sharing, all for one and one for all; no one need fear that he will be abandoned by his neighbors in his hour of need, for he is surrounded by love, or, if that is too strong a word, at least by benevolent feelings. There is, too, a sense that the people are united in a common purpose, for this gives an additional glow of selflessness to the individual motivations. The thought of being one of a group of people who love and understand each other, who are united in common purposes, among whom there is no need for base self-seeking, has a definite appeal for almost everyone.

But contemporary nation-states are not and cannot be such groups. They are too large and heterogeneous. One cannot possibly know—in any sense of the term, however weak—all of his fellow citizens, unless he lives in an exceptionally small country. And inevitably one will feel closer ties of affinity with some foreigners than with some fellow-citizens. Furthermore each person belongs to many different groups, formed in different ways with different bases of cohesion. There is no one group that one can point to as "my group."[15] The intranational diversity that we find in most countries today—very markedly so in the United States—is really more a blessing than a curse from the cultural point of view. It does not prevent like-minded people from getting together, and it presents many more cultural opportunities than there would be in a homogeneous society. The division of labor has its beneficial effects in the cultural arena as in the economic.

So to picture the nation as a cozy family into which outsiders ought to be invited only if they can really be incorporated and loved to the fullest extent is so false to reality as to be objectionable even as an ideal. Walzer is fairly to be labeled a "national socialist"; and while it would be wildly misleading to call him a "Nazi" or a "fascist" (because these terms are associated with the glorification

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of violence and domination, if for no other reason), still the experience of the interwar years in twentieth century Europe suggests the unworkability of his ideal. Walzer may be right that national socialism is more realistic than global socialism, since the nation-states already exist; but the benefits of socialism—the feelings of community and solidarity that rest on mutual friendship and understanding and that give rise to sharing and selfless behavior—are only to be had on a much smaller scale. To attempt them at the level of modern nations would be (and has been) disastrous.[16]

In sum, the sense of belonging to a cohesive national group is not nearly as valuable as Walzer makes it out to be; and to attempt to impose cultural uniformity on one's national group, in part by excluding foreigners, in part by compelling some of one's fellow-citizens to behave differently from how they wish to, is quite unjustified.

An oddity of Walzer's national socialism emerges in the second half of his article. Walzer has claimed that we in the United States, for example, are justified in refusing to admit foreigners into our society on a permanent basis, because they might not share our cultural values and traditions. But this seems rather hard on them; especially if they are very poor, it is contrary to the spirit of left-wing socialism to deny them the opportunity to make a better living among us. (To be sure, I have labeled Walzer a right-wing or national socialist; but he seems to retain an emotional attachment to left-wing, international socialism, and I believe he would wish to minimize his disagreements with it.) Now there are statuses intermediate between total exclusion from the country and admittance to citizenship. Foreigners might be admitted, for example, as "temporary workers" or "guestworkers," with greatly diminished political rights, and with perhaps a time limit on their stay in the country as a guarantee against their becoming a permanent part of our culture. If necessary, they could even be confined to certain residential district (ghettos), so as to prevent their contaminating the native culture with their foreign ways, although presumably domestic servants would be allowed to live with the families they worked for. This plan, however repugnant, would seem better than total exclusion, because it would enable the would-be immigrants to accomplish at least part of their purpose in immigrating, and it would supply domestic employers with the workers they want. Yet Walzer rejects the idea of creating guestworkers, braceros, and other such groups of second-class, noncitizen residents.

It need hardly be said that his argument for this rejection is weak. It consists in the assertion that "men and women [who] are . . . subject to the full force of the state's authority . . . must be given a say . . . in what that authority does."[17] But tourists are so subject, without anyone's claiming full political rights for them. Besides, the guestworkers would voluntarily place themselves under the government's authority, waiving any alleged right to participate, if the alternative were (as it would be on Walzer's principles) total exclusion. They would

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be better off if given this chance, domestic employers and consumers would be better off—conceivably everybody would be better off than if the guestworkers could not enter the country at all. Yet Walzer would reject this possible Pareto-improvement, because it would violate the would-be immigrant's alleged right to "participate" (if only he could enter the country!).

Walzer's national socialism thus falls uncomfortably between two stools. He holds it to be imperative that the wealthier citizens of a nation transfer some of their wealth to their poorer fellow-citizens, but recognizes no such duty (or only a severely attenuated one) to *foreigners,* no matter how poor *they* might be. By contrast, the international socialist position is that such duties of transfer are owed to the poor regardless of nationality; everyone has "welfare rights" irrespective of citizenship. And the individualist position is that there are no such rights, and no such duties of transfer to anyone, fellow citizen or not. Either of these positions would be easier to defend than is the claim that we should draw the line at the citizen/foreigner frontier, finding rights and duties on one side of this line but not on the other.

But the national socialist is in even worst straits. By excluding poor foreigners from immigrating, he not only does not help them, he hurts them, foreclosing one of the options they might have taken to better their lot. So the claim is that we have duties to our poor fellow-citizens, but as for poor foreigners—perhaps in absolute terms much poorer than the former group—we should recognize a right and perhaps even a duty to take action inimical to their interests. I believe this contrast is too stark to be plausible.

Yet this national socialist position is the basis for most of the current non-philosophical debate about immigration policy. One of the most powerful arguments for getting control of immigration into the United States is that we cannot tolerate a flood of poor people who would use government services and accept transfer payments that were intended for the domestic poor. The welfare state would soon collapse if its benefits were bestowed indiscriminately on all comers from around the world. But could we not limit these welfare-state benefits to people who are citizens as of today's date, simultaneously throwing the gates open to anyone who wanted to enter? No, *that* would create second-class residents, who would be treated unfairly in being denied benefits available to others who happened to be here first. Still, no one would be *forced* to enter the country; and giving people the opportunity to enter *sans* benefits might help them and hurt no one—it might be a Pareto-improvement on excluding them altogether. The real objection to it, I think, is that it would show up the lack of moral foundation for the welfare state, and for national socialism in general. It is easier to ignore injustice if it concerns the unequal treatment of people who live far apart than if it concerns neighbors. But it is injustice none the less.

We have talked of the state in its role of fostering the national culture and in its role of providing transfer payments to the domestic (but not foreign) poor.

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Neither of these roles has seemed legitimate, and thus neither provides a convincing pretext for exercising the power to limit immigration. But a less problematic role for the state exists—national defense and the preservation of order. And it would not do to abandon the topic of nationalism without considering whether national defense might not provide a justification in some cases for controlling immigration.

In a paper on "The Ethics of Immigration Restriction,"[18] I have acknowledged that the national-defense argument is the most difficult one to reject in principle, though there will not be many cases to which it will be applicable.[19] The "defense" in question is not against overt attack, for this would not come under the heading of immigration policy. It is rather defense against the gradual subversion of the state by the influx of immigrants with different, inferior political traditions, who (if allowed to become too numerous) would seize power and oppress the old natives. The latter's right of self-defense, it might be held, would justify them in keeping the subversives from their midst. Obviously, this type of argument has its dangers—for example, it would apply equally to the curtailment of such traditional rights as freedom of expression and freedom of assembly. Obviously it is irrelevant to, say, the contemporary United States. But I cannot claim to have shown that it never justifies immigration restriction under any circumstances. When a state is really threatened by aggression or subversion, which if successful would replace it by a worse state, then the national socialist point of view appears in its most appealing light. To say that it is still not very appealing is not to say that it has no validity at all.

The philosophical discussion of immigration restriction has thus largely been a discussion of the merits of nationalism. The issue is not finally settled, but nothing has yet been done to rescue nationalism from the dubious company of racism and sexism. The thesis that we should give priority to fellow citizens, like the similar thesis with respect to members of our own racial or sexual group, requires some strong support if it is to be credible. It has not yet been given such support, and the prospects are bleak.

So much for the nationalistic "priority thesis." But recall that there was another premise required for a plausible defense of restrictionism: namely, that immigration tends to harm the citizens of the immigrant's country of destination. For if these citizens benefit, and the immigrant benefits (as he expects to, or he wouldn't immigrate), then what objection can there be to the immigration?

Now philosophers have no special competence in evaluating this premise; it is more nearly a matter of positive economic analysis. The conventional view, mentioned by King, is that domestic managers, capitalists, and consumers gain from freer immigration, and domestic workers in the more menial jobs tend to be harmed. The overall effect on citizens may be expected to be positive, though this cannot be regarded as certain. But it is at least clear that economics lends no *support* to this other essential premise—that citizens are harmed on balance by immigration—and so the attempt to justify restricting immigration fails on this count, too.

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King does not share this view, and the reason, I believe, is that he falls into a confusion that it is important to notice. A philosophical evaluation of immigration restriction will consider whether restrictions should ever have been imposed in the first place, which (in a consequentialist view) is equivalent to the question of whether their long-run consequences are good or bad. It is another question entirely what to do about *existing* immigration restrictions, supposing we have decided against them on moral grounds. Should we wipe them away at a stroke, gradually ease them out of existence, or even (conceivably) keep them in place forever on the grounds that the good done by eliminating them would be overbalanced by the turmoil of the transition from restrictionism to openness? Just so, the early nineteenth century opponents of slavery debated the proper course of abolition. I would favor swift abolition of immigration restrictions, as of slavery, in spite of the transitional difficulties. But the subject is complicated, and I cannot give it adequate treatment here.

What is essential, however, is not to confuse the recognition of difficulties in the transition to an open policy with defense of the old restrictive policy. I suspect King does this in arriving at his conclusion that restrictionism is justified after all. (He may also be relying in part on faulty economic analysis.) He tends to focus on the welfare loss of the poorer segments of the native population, due to increased compeition from immigrants. But this loss is a one-time transitional phenomenon and does not provide an argument for restricting immigration in the abstract.

In summing up, I must admit that the discussion so far has not always exhibited the virtues I attributed above the philosophical treatment of public issues. King, notably, has limited staying power for abstract ethical argument, and lapses quickly into a perspective limited to *Realpolitik*. Walzer is guilty, less flagrantly, of the same fault. There is evidence that he would prefer international to national socialism, but he adopts the latter because it promises to be easier to achieve, while the former may be unattainable.[20] His discussion of immigration would have looked very different if he had written it from an internationalist perspective. But the volume of work on immigration from a philosophical perspective is still very small.[21] There is every reason to believe that much more will be done in the near future, and that the practice of restricting immigration will be subjected to a searching moral evaluation. The upshot, I predict, will be its overwhelming rejection.

NOTES

1. David Ozar has suggested to me that some moral problems may be clarified by the philosophical analysis of some nonmoral concepts that they involve. Examples might be the concepts of a *profession*, of *government*, of *consent*, etc. But, granting that clarity of mind is always valuable, I doubt that this kind of philosophical analysis has much to contribute to the resolution of public moral issues.

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2. Timothy King, "Immigration from Developing Countries: Some Philosophical Issues," *Ethics* 93 (1983), 525–36.
3. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), sec. 58. See also Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973), chap. 12.
4. To support this claim in detail would require an extensive digression. Here I will only point out that if the worst off people want to change countries, and are prevented from doing so by legal restrictions, then these restrictions have (*prima facie*) detracted from their welfare. If not they, but their somewhat better-off fellow countrymen want to migrate, then freedom of migration might at least relieve population pressures in their country, tending to make those who remain better off. Dynamic considerations would favor free immigration, which would tend to make the world economy more efficient on the whole and would thus tend to the betterment of all classes in the long run. (But it is not clear how dynamic considerations figure in the Rawlsian framework: Recall his abortive discussion of the "just rate of saving" in *A Theory of Justice*, secs. 44 and 45.) Even restrictions that benefited the worst off in the short run would not thereby be justified if, instead, the restrictions could be lifted and some of the surplus thereby generated were used to improve the position of the worst off.
5. Clearly the right to associate with foreigners is abridged by immigration restrictions; and preventing foreigners from entering the country interferes with many possible economic transactions between natives and foreigners, thus abridging the natives' property rights.
6. Charles Beitz, "Cosmopolitan Ideals and National Sentiment," *The Journal of Philosophy* 80 (1983): 591–600.
7. Ibid., p. 597.
8. Bernard Williams, "A Critique of Utilitarianism," in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), esp. sec. 5.
9. For completeness let me just mention the "circumstances of justice" argument for nationalistic limitations on justice, which has been effectively refuted by Brian Barry, "Circumstances of Justice and Future Generations," in R. I. Sikora and B. Barry, eds., *Obligations to Future Generations* (Philadelphia: Temple University Press, 1978), 204–48.
10. A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), chaps. 3 and 4.
11. See Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy and Public Affairs* 9 (1980):209–29, and the references contained therein. Also, the replies of Beitz, Luban, and Doppelt, ibid, 385–403.
12. Michael Walzer, "The Distribution of Membership," in Peter G. Brown and Henry Shue, eds., *Boundaries: National Autonomy and Its Limits* (Totowa, N.J.: Rowman and Littlefield, 1981).
13. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books 1983).
14. This point deserves extra emphasis. There are very plausible arguments for allowing individuals to choose those with whom they deal; and if absolutely all individuals in a country refuse interaction with foreigners, the effect will be similar to a ban on immigration, even without any special government action. But the topic I am concerned with in this paper is immigration restriction as a government policy, which would be imposed only if some individuals were willing to accept immigrants in the absence of governmental sanctions.
15. The objections are obvious enough, even to Walzer. In an earlier essay, "The Obligation to Live for the State," in *Obligations: Essays in Disobedience, War, and Citizenship* (Cambridge: Harvard University Press, 1970), he had remarked on the important psychological and moral differences between small and large groups, and the fact that modern nations are very large (see esp. p. 186). Later (*Obligations*, p. 213) he noted the opinion of Aristotle and Rousseau that participatory politics of the kind he favors is possible only in a very small state. But he seems to have forgotten these insights in writing "The Distribution of Membership."
16. It is symptomatic of the failure of his theory that the national socialist is driven to advocate the preservation or creation of solidarity by means of police power (e.g., in the enforcement of immigration restrictions). True solidarity must be spontaneous; it cannot be imposed by the state.
17. See note 12, p. 31. Compare with his *Spheres of Justice*, note 13, p. 61.

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18. James L. Hudson, "The Ethics of Immigration Restriction, *Social Theory and Practice* 10 (1984):201-39.
19. Likewise Alvin Rabushka, "A Problem of People," forthcoming.
20. Walzer, *Spheres of Justice,* pp. 29f., 34f. Walzer also borrows an argument from Sidgwick (which King then takes from Walzer) to the effect that national restrictions on immigration are good because, given the desire of people for some sort of "closure," the alternative to national restrictionism is local restrictionism—restrictions placed on entry by small political units such as neighborhoods. An assumption of the argument seems to be that the larger the area within which free movement is allowed, the better; hence the conclusion that national restrictions are preferable to neighborhood ones. But then better yet would be freedom of movement everywhere. The argument, in fact, leads to the conclusion that all immigration restrictions are bad (though national ones are not as bad as local ones). Again, Walzer seems to be reluctant to follow the argument where it leads because of a fear that his recommendations will be "unrealistic." (See *Boundaries,* note 12, pp. 7-10.)
21. Some other recent philosophical writings on immigration are Elsa M. Chaney, "Migrant Workers and National Boundaries," and Judith Lichtenberg, "National Boundaries and Moral Boundaries," both in *Boundaries* (they are, in fact, critiques of Walzer's article); Henry Shue, "The Burdens of Justice" and Kai Nielsen, "Global Justice and the Imperatives of Capitalism," *Journal of Philosophy* 80 (1983) (these, along with Beitz's article, are contributions to an American Philosophical Association symposium on International Justice, and are not primarily concerned with immigration); and Judith Lichtenberg, "Mexican Migration and U.S. Policy," and James W. Nickel, "Human Rights and the Rights of Aliens," in Peter G. Brown and Henry Shue, eds., *The Border That Joins: Mexican Migrants and U.S. Responsibility* (Totowa, N. J.: Rowman and Littlefield, 1983). A neglected precursor of the more recent discussion is Roger Nett, "The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth," *Ethics* 81 (1970-71):212-27. Several recent writers refer back to Henry Sidgwick, *The Elements of Politics* (London: Macmillan, 1891).

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Tax Rate vs. Tax Base: A Public Choice Perspective on the Consequences for the Growth of Government

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In recent years, as libertarian policy analysts have put their minds to the question of tax reform, some have succumbed to the lure of a broad-based, proportional, or flat, income tax. Under these proposals, the current progressive multirate structure would be replaced by a single rate that would apply to all taxpayers. Moreover, all forms of income would be taxed; in other words, an attempt would be made to create a "perfectly" broad tax base. The current income tax, of course, does not cover all types of income: Nonmonetary fringe benefits are untaxed; income that goes for interest on a home mortgage is untaxed; and so forth.

Those attracted to a broad-based flat tax cite several reasons for believing that it would be an improvement over the current structure. Most of the reasons are standard. They include the assertion that such a tax would be more "neutral" with respect to the outcome of economic processes, exerting less influence on particular aspects of people's economic behavior. It is also argued that a broad-based flat tax, because of its simplicity, would reduce taxpayer compliance costs. Today many people hire accountants and lawyers to fill out their tax returns. This, it is argued, diverts resources from more productive employments. These arguments are essentially based on economic considerations. While we would argue that the economic case for broadening the tax base is founded on unreasonable and in some cases illogical economic principles, it is not our pur-

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pose to address these issues in this essay. Our analysis concerns what is offered as the "libertarian" case for base broadening.[1]

Base-broadening has in fact taken precedence over lowering revenue, as evidenced by a willingness to accept a simplified, broadened tax even if it means no reduction in revenue, that is, revenue neutrality.[2]

Why is this trade-off accepted by some libertarians? The answer rests on strategic concerns. Flat-tax advocates maintain that a broad base would give rise to "taxpayer solidarity" in the struggle to reverse the growth of government power. According to this argument, if everyone's income is subject equally to a single tax rate all taxpayers will see themselves as in the same boat. Thus they will resist efforts to increase taxes and, moreover, abstain from political profit-seeking because they themselves will have to pay. As libertarian tax analyst Jule Herbert writes in a recent essay for the Cato Institute, "It is suggested that a broad-based, indexed, proportional income tax would put all taxpayers in the same position relative to the taxing side of the tax and expenditure process. The resultant political cohesion may be termed 'taxpayer solidarity.'"[3]

There are several problems with this notion. The most obvious is that it flies in the face of the well-developed tenet of public-choice analysis that focuses on the implication of concentrated benefits and diffused costs for the growth of government. The principle states that any political system is biased toward expansion because, as Buchanan and Tullock write, "Almost any conceivable collective action will provide more benefits to some citizens than others, and almost any conceivable distribution of a given cost sum will bear more heavily on some individuals and groups than on others."[4] The benefits will be concentrated on a smaller well-organized group, giving each member a relatively large return; the costs will be imposed on a larger unorganized group, extracting a relatively small proportion from any individual member.

Ironically, Herbert cites this principle. He writes, "Since each program adopted provides a substantial benefit to a well-defined group while imposing small relative costs on individual taxpayers, the system is prejudiced toward increasingly higher spending. In short, benefits are particularized; costs are generalized."[5]

Herbert then curiously enlists this principle in defense of a broad-based tax. But he misses the mark. His complaint about the current system is that political profiteers can push the cost of their favors on to a subgroup of taxpayers, which leads to higher government spending and taxes. It is our contention that base-broadening would exacerbate this problem. It would enable political profiteers to push their costs on to an even larger, more poorly organized group of taxpayers, further dispersing the costs, while leaving the special-interest benefits intact. How is it that despite what seems to be an awareness of this public-choice insight the "taxpayer solidarity" argument is supported? The answer can be found in one sentence from Herbert's essay. "As long as concentrated *spending interests* are pitted against *diffused taxpayer interests*, it is likely that spending and taxing

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will increase.''[6] Herbert had previously stated the public-choice insight correctly, but at the critical point where he moves to his conclusion, he subtly contorts it.

The problem is not that concentrated spending interests are pitted against ''diffused taxpayer interests,'' but rather that the costs of serving the spending interests are ''diffused''—spread thinner—while the benefits are concentrated. The standard public-choice argument is not in terms of concentrated versus diffused ''interests'' but in terms of concentrated *benefits* and diffused *costs*.

To see this important difference, imagine first a society of 100 million taxpayers who make their living raising sheep and who pay a flat tax on all income. Next imagine the same 100 million taxpayers working at different jobs and paying a narrow-based tax that hits different kinds of income differently. In the first case, the taxpayers could be said to have a concentrated interest because they do the same kind of work and they pay the same tax. The second group would appear to have diffused taxpayer interests. Yet, under public choice theory, a given tax increase would be easier to impose on the first group than the second, other things equal, because it would be spread more thinly. The more thinly a tax increase is spread, the smaller the expense to any single member and thus the higher the costs relative to the benefits realized in successfully opposing it. Conversely, the more concentrated the increase, the greater the expense to a single member, and thus the lower the costs relative to the benefits realized in successfully opposing it.

Diffused taxpayer interests could actually militate against tax and spending increases because this diffusion results in smaller groups with similar interests, each of which is more easily organized than larger groups with similar interests. Indeed, given this proper interpretation, libertarian policy analysts ought to want to reform the system so that concentrated political profiteers are resisted by concentrated potential costbearers.

Another dubious point is contained in Herbert's sentence cited above. To reiterate, ''It is suggested that a broad-based, indexed, proportional income tax would put all taxpayers in the same position relative to *the taxing side of the tax and expenditure process.* The resultant political cohesion may be termed 'taxpayer solidarity.'''

This is arbitrarily and unjustifiably selective in its focus. A distorted picture is bound to emerge if one looks only at the ''taxing side of the . . . process.'' A far different picture emerges when the spending side is added. (As Herbert wrote a page earlier, ''Taxation is but one side of a larger *tax and expenditure process.*'' His emphasis.) Under a low broad-based flat tax, a political profiteer will not abstain from seeking a subsidy merely because he, along with everyone else, will have to pay more in taxes. He will compare his (necessarily) small share of the tax increase to the expected benefits of the subsidy. If the benefit exceeds the cost, he will forge ahead. It is unimportant that all taxpayers are alike on the taxing side of the tax and expenditure process if they are not alike on the spending side. Why should a political profiteer be in solidarity with the mass

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of taxpayers who won't receive the benefits? In fact, broadening the base may reduce his share of any additional tax levy, making the potential benefits more attractive.

Imagine that a perfectly broad-based flat tax is passed. What are the likely results? Since by definition such a tax is one in which the costs of government are diffused to the largest extent possible, we can expect the public choice insight to be manifest with a vengeance. The results can be expected to be those described by Herbert:

> It is virtually impossible for an individual taxpayer to determine his taxed share of any government project and, even if he could, he would find his share very small and not worth fighting over. But the value of a project to a bureaucrat (it is his career) and to government contractors (their livelihoods depend on it) can be determined and certainly explains their support for the project. These people can be expected to spend a great deal of time and money lobbying on its behalf. The average taxpayer thus remains ignorant of the whole affair and would not get involved even if he knew the facts of the matter.[7]

Precisely! Yet if this is true today, think how much more it would apply with a broadened base. A tiny increase in the tax rate would yield large sums of money, yet the increase to any given taxpayer would be small—too small to motivate the average taxpayer to actively oppose it. This would be a case of truly diffused taxpayer interests, because the per-capita increase would be too small to produce any significant cohesion. On the other hand, the large sum raised would be concentrated on small well-organized groups that would have a major incentive to lobby and otherwise engage in political profiteering. The theory discussed here distills a nearly self-evident point: Assume a flat tax on a perfectly broad base. Next assume that someone proposes a small tax increase—say four-tenths of a percent—to increase federal aid to education and to repair the interstate highway system. The tax hike would be touted as a small, fair levy ("everyone will pay it") to improve the schools and the roads. Most taxpayers who bother to think about it will conclude that the increase for each will indeed be small—too small to even study the issue to any extent and join a protest against it.

On the other hand, some groups will calculate that the benefits for their members will heavily outweigh the costs. Who? The teachers unions and the asphalt manufacturers, to name two. As pressure groups, they have long committed the resources needed to lobby for such legislation. They have no reason to be in solidarity with any taxpayers who oppose the tax. Moreover, they will be able to win over taxpayers to their side by convincing them that improving the schools or roads in their particular districts is worth the tax increase. We can count on these groups to dominate the production of information about legislation. Since they have such a large economic stake in the outcome, they will naturally devote their resources to propaganda. In contrast, if the tax increase is due to fall on

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another small, self-conscious group (with high cost to each individual), we can expect that group's resistance to be on the order of the proponents' support. With so much to lose, the members are more likely to galvanize against the increase.

Proponents of taxpayer solidarity through base broadening have the burden of explaining why their system would not intensify the process Herbert and his colleagues describe. To date they have merely asserted their belief without showing why the public choice insight is suspended in the case of taxes.

Herbert writes, "If progressive tax rates within a democratic system have an inherent bias resulting in higher taxes than would otherwise be the case, then it must be admitted that changing the rate structure to flatten it or to institute a proportional tax system will result in increased political pressure to reduce overall burdens."[8]

Interestingly, this description of the tax says nothing about the tax base, though it is a critical element. Taken literally—without reference to broadening the base—the point is still dubious. It is not clear that you would have more cohesion with a single rate; large groups are harder to organize than small groups—remember the free-rider problem. But Herbert presumably means to include a broad base in this tax. So what he claims must be admitted surely need not be admitted at all! If a less-than-broad-based tax has led to increased government spending and taxes, then a broad-based tax is likely to do even worse. The only thing that must be admitted is that assurances against the growth of government perhaps cannot be built into the tax system; other methods must be found.

Buchanan and Tullock suggest two ways in which the tax system could be changed to avoid the problem at hand. They write, "One means of modifying organizational rules so as to produce results akin to those that would be produced under truly 'general' legislation [that is, where costs for any individual are the same as the benefits] would be to require that those individuals and groups securing differential benefits also bear the differential costs."[9] This clearly departs from the standards embodied in a flat broad-based tax.

Later they go further: "One means of eliminating this sort of distortion [namely, the imposition of "excessive costs" on the whole population for the benefit of pressure groups], which may appear somewhat farfetched because it is novel, would be to require that all such [government] projects be financed out of taxes levied on *specific groups* [emphasis added] in the total population, although *not* on the same group securing the benefits. . . . Excessive external costs would be substantially reduced in this manner, and something roughly similar to the pattern of 'general' legislation would emerge."[10]

What they are saying is that if benefits are concentrated, the best way to restrain the growth of government is to make sure that costs are also concentrated. The point is clear: Careful application of the insight regarding concentrated benefits and diffused costs undermines any claim that a flat broad-based tax would create effective "taxpayer solidarity" and work against the growth of the state.

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NOTES

1. It is important to note that libertarian advocates of the flat broad-based tax believe that the rate question and the base question are inseparable. They reject out of hand the suggestion that the base be kept narrow (if not made more narrow) and the rates be cut. Arguing that historically rates and base have gone together, they present the two elements—flattening the rates and broadening the base—as a worthwhile exchange: "loopholes" for lower rates.
2. See Jule R. Herbert, Jr., "An Agenda for Tax Reform" in *Beyond the Status Quo* (Washington, D.C.: Cato Institute, 1985), p. 42. All quotations from Herbert are from this article.
3. Ibid., p. 41. For an endorsement of this position, see Jeffrey C. Smith, "The 10/10/10 Plan: Combatting Corporate Capital Punishment," Citizens for a Sound Economy *Issue Alert*, No. 5, Nov. 4, 1985. As an aside, indexing would be superfluous under a single-rate tax, since there would be no tax brackets for taxpayers to be bumped up to as inflation increased their nominal incomes.
4. James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962), p. 291.
5. Herbert, note 2, p. 40.
6. Ibid., p. 41. Emphasis added.
7. Ibid., pp. 40–41.
8. Ibid., p. 42.
9. Buchanan and Tullock, note 4, p. 292.
10. Ibid., p. 294.

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Lord Townshend and the Influence of Moral Philosophy on *Laissez Faire*

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The influence of moral philosophy on the rise of laissez faire is a topic that several scholars have examined. The late Jacob Viner said that "the most important intellectual developments which finally prepared the group for the formulation of an economic doctrine of laissez-faire consisted of contributions by moral philosophers and theologians."[1] All known examples of such influence do not deal explicitly with economic issues, but rather state in general terms that "Self-Love and Social be the same"; as a result, the moral philosophers did not advance from social philosophy to economic analysis.[2] The gap between the two fields was, however, explicitly bridged by Charles, the third Lord Townshend.

To his contemporaries the third Lord Townshend would probably have been best known as the son of "Turnip Townshend," diplomat and scientific farmer; to those active in gay social circles he would also have been the husband of the beautiful and witty Audrey Townshend, while after his death he may have been remembered as the father of the brilliant Charles Townshend, whose plan to tax the American Colonies had such unforeseen consequences. He has been considered a dull, boorish man little given to intellectual activity. This does him great injustice. Although scion to one of the great agricultural houses of Britain, he wrote a tract opposing the bounty on corn, which he signed "By a Landowner," in order to emphasize that he was writing against a policy from which men like him benefited.[3] What is of more importance is that Townshend's subsequent correspondence shows him to have become a staunch believer in laissez faire. We are thus faced with two thinkers in the mid-eighteenth century independently advocating laissez faire—Adam Smith in Scotland and Lord Townshend in England.

The extant correspondence that is relevant consists of the letters of Lord Townshend to the Reverend Josiah Tucker, one of the celebrated economists of the eighteenth century,[4] and of Townshend's letters to the Vice-Chancellor of Cambridge University, the Reverend P. Yonge.[5] The importance of the Townshend-

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Tucker correspondence was noted by the editor of the Townshend papers, who said that it formed "a singular contribution to the history of the study of political economy." Jacob Viner also noticed the correspondence in his *Guide* to the life of Adam Smith and pointed out that Lord Townshend showed "strong free-trade tendencies."[6] Inexplicably, however, Viner attributes the correspondence to the son and not to the father; possibly he was led to thinking that because Charles Townshend, the son, later chose Adam Smith to tutor his stepson, Charles must himself have taken an interest in economics.

Lord Townshend's first published pamphlet is entitled *National Thoughts* and it has often been ascribed to the more famous son, also called Charles Townshend.[7] The text of the pamphlet is concerned with reforming the morals of the common people, a concern probably inspired by Henry Fielding's *Enquiry into the Causes of the Late Increase of Robbers* (1751). Lord Townshend blames drunkenness and idleness as the causes of the miserable condition of the poor and suggests as a cure the prohibiting of all small credit—no debt of less than £3 should be liable in court. This, he felt, would provide an effective check to an evil that flourished largely because of the ease of buying on credit.[8] It is only in the appendix that Lord Townshend, along fairly well-trodden lines, attacks the corn bounty. He argues that a country should not export any commodity that is a raw material for the production of exports, and, least of all, pay a bounty on such goods. As corn was necessary for labor and labor was essential to all production, the folly of a bounty on the export of corn was evident.[9]

As he explained later to Tucker, the pamphlet was hastily written to support a bill on the poor that Townshend wished to introduce into Parliament and as such did not embody his best thoughts.[10] It was while discussing this bill with a fellow Member of Parliament that Townshend was told of Tucker's tract defending the naturalization of foreign Protestants and this led Townshend to search out other pamphlets of Tucker's and to open a correspondence with him. Although agreeing on all points of principle, Tucker was initially hesitant about the harmfulness of the bounty on corn. Eventually, however, he was entirely converted by Lord Townshend's arguments against the bounty.[11]

The unusual feature of Townshend's letters, a feature not really visible in his pamphlet, is his philosophical approach; this is well described by Tucker in one of his letters to Lord Townshend:

> I am mightily pleased with yo^{r} Lordship's general Remarks, & manner of accounting for People's frequent & gross Mistakes in y^{e} Affairs of Commerce: It certainly is as yo^{r} Lordship observes, by arguing from Particulars to Generals; whereas in this Case a Man sho^{d} form to himself a General Plan drawn from y^{e} Properties of Commerce, & then descend to particulars & Individuals, & observe whether they are co-operating with y^{e} general Interest: Unless he doth this, he studies Trade only as a Monopolist, & doth more Hurt than Good to the Community.[12]

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The most indicative sentence above is the attribution of mistaken views of commerce to the spirit of monopoly. It was Townshend's belief that only a free trade would properly lead to the prospering of society as a whole. This is seen in the sharp manner in which he criticizes Sir Matthew Decker for not having been a consistent advocate of freedom of trade. After praising Decker's attack on the corn bounty, Townshend notes, "Notwithstanding all this sound Doctrine he proposes to form Companies and to erect Magazines of Corn in every County. . . . A most surprising absurdity and inconsistency." Townshend then goes on to state the "correct" policy to be followed.

> If Trade and Industry and all our Ports were thrown open and all Duties, Prohibitions, Bounties, and Monopolies of every kind whatever were taken off[f] and destroy'd as you have very judiciously proposed, you would, I am perswaded, soon find that private Traders here would erect Warehouses for Corn as they have done for other manufactures and we should then have them on a reg[ular] and natural footing and this Island would then be, as Holland has been, the great market of Europe for Corn. But as long as the Bounty remains this cannot be. . . .[13]

This is surely an elaborate statement of the doctrine of free trade, and its coincidence with the espousal of similar ideas by Adam Smith is remarkable.[14] We know that Smith had delivered lectures in 1751 in which he claimed that liberty and justice was all that was required to provide opulence. There is no evidence to suggest that Smith knew Lord Townshend or vice versa, and the independent discovery of laissez faire by two individuals is perhaps evidence that such notions were "in the air."

In the *National Thoughts,* Lord Townshend's thoughts are undoubtedly paternalistic. He begins by urging the great importance of the welfare of the laboring poor for any nation. This leads him to worry about regulating credit, as mentioned earlier, as well as insisting upon the necessity of keeping the poor actively employed so that they do not lose their industrious habits. "I always consider this class of people," he explicitly states in justification of his paternalism, "as in some respects in a state of minority."[15] Concern for teaching the poor their own well-being disappears from Lord Townshend's later letters. Why was this so? The most probable explanation would seem to be that, having accepted the validity of laissez faire, Townshend came to believe that the poor could not be helped more than by making them free to help themselves. This is consistent with the bill Lord Townshend introduced in Parliament to enable greater labor mobility.

Townshend was so impressed with the importance of a knowledge of the true principles of trade that in 1756 he instituted prizes at Cambridge for essays on economic topics. The University was initially a little worried about how so useful and topical a subject as trade would fit in with the traditional emphasis on classics and mathematics, but eventually agreed. The competition did not continue owing to an argument between the University and Lord Townshend on the question

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chosen for the first year; Lord Townshend had wished for "What influence has Trade on the Morals of a Nation?"—a question that the University rejected on the grounds that it seemed to bear too closely on the recent agitation against a bill for the naturalizing of Jews. Townshend made it clear that he thought such an excuse a flimsy one.

> There is not any moral Duty which is not of a Commercial nature. *Freedom of Trade is nothing more than a freedom to be moral Agents.* And since a free moral Inquiry into this most interesting Theory, on the Observance of which the happiness of this Life and of the next do entirely depend, cannot be allow'd at your University I have done, and have nothing more to add than that I am-S^{r}-Your obd^{t} humble Serv^{t} [emphasis added].[16]

This is indeed approaching economics through moral philosophy! It is also a viewpoint whose only consistent outcome would be laissez faire, a point highlighted by the suggestive nature of some of the other questions chosen by Lord Townshend; the second question, in particular, is clearly meant to be rhetorical.

> Has a free trade or a free Government the greater effect in promoting the wealth and strength of a Nation?
>
> Can any restraints be laid on trade or industry without lessening the advantages of them? And if there can, what are they?
>
> Is there any method of raising taxes without prejudice to Trade? And if there is, what is it?[27]

The influence of Lord Townshend on his contemporaries is difficult to gauge. The *Monthly Review* guessed the author's identity immediately upon publication of the *National Thoughts*, and this pamphlet was quoted the next year in an interchange of views on the benefits of the corn bounty.[18] The copy of the *National Thoughts* now at the Goldsmith's Library in London is inscribed "To Mr. Richardson." Who is this Mr. Richardson? My guess is that it is Edward Richardson,[19] a journalist who often wrote in the *Gazetteer* as the "Inquisitor," because Tucker once inquired of Lord Townshend the name of the author of a paper in the *Gazetteer* that Tucker and his merchant friends liked and wished to have reprinted. This conjecture of Lord Townshend's active involvement receives some further support from the pamphlet *Considerations on the Utility and Equity of the East India Trade* (1768). The unknown author argues for breaking the East India Company's monopoly and regrets the death of Lord Townshend, who, he asserts, had much knowledge of commercial questions. The extent to which Lord Townshend won converts is not clear, witness his failure at Cambridge, but there seems little reason to doubt that laissez faire was preached in England prior to the *Wealth of Nations*.

It is hard to overemphasize the identity of philosophical outlook between Lord Townshend and Adam Smith in the 1750s. While the former was basing the right to free trade on the rights of individuals, the latter, as we remarked earlier, was

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lecturing that liberty, light taxes, and peace would raise a country to affluence, rather than any regulations on its trade. In addition, on an important policy issue—the corn bounty—their arguments are very similar. Both attack the bounty for having reduced the subsistence wages in foreign countries, thereby harming Britain's export manufacture by lowering foreign costs of production.[20] The extant correspondence makes it clear that Lord Townshend would have supported a full freedom of trade, both domestic and foreign, and he may thus be considered a full-fledged exponent of laissez faire.

NOTES

1. As quoted in M. L. Myers, "Philosophical Anticipations of Laissez-Faire," *History of Political Economy* 4 (Spring 1972):163–75. Very similar statements, however, appear in Jacob Viner, "The Intellectual History of Laissez-Faire," *Journal of Law and Economics* 3 (1960), p. 58; and *Studies in the Theory of International Trade* (New York: Harper, 1937), p. 91.
2. Myers, "Philosophical Anticipations." Further references to the literature are provided in this article.
3. *National Thoughts, Recommended to the Serious Attention of the Public. With an Appendix, Shewing the Damages arising from a Bounty on Corn* (London: R. Dodsley, 1751).
4. For an account (albeit somewhat inadequate) of Tucker, see W. E. Clark, *Josiah Tucker, Economist* (New York: Columbia University Press, 1903).
5. This correspondence is calendared in the Eleventh Annual Report, Historical MSS Commission, Appendix, part iv, pp. 371–79 and pp. 382–409, hereafter referred to as HMC. The Historical MSS Commission does not, unfortunately, know the current whereabouts of these letters, and my inquiries have hitherto been without success. The correspondence is not noticed by D. A. Winstanley in *The University of Cambridge in the Eighteenth Century* (Cambridge: Cambridge University Press, 1922). The existence of both sources was noted by Clark in *Josiah Tucker,* but he made no use of them.
6. Jacob Viner, *Guide to John Rae's Life of Adam Smith,* Preface to reprint of John Rae's *Life of Adam Smith* (1895) (New York: Augustus Kelley, 1965), pp. 83–84.
7. This pamphlet is erroneously attributed to Charles Townsend, the son, in the catalogues of the British Library (Museum), Beinecke Library (New Haven), and the Kress Library (Cambridge, Mass.).
8. *National Thoughts,* note 3, pp. 4–9.
9. The argument thus resembles that of a work attributed to Sir Matthew Decker, *An Essay on the Causes of the Decline of the Foreign Trade,* 2d ed., (London: J. Brotherton, 1750). The relevant parts of Townshend's arguments may be found in D. G. Barnes, *A History of the English Corn Laws* (New York: Crofts, 1930), pp. 24–25.
10. "For encouraging Industry, by removing certain Disabilities and Restraints contained in former Acts, presented by the Lord Viscount Townshend, and read, and ordered to be printed, 5th February (1753)." *Calendar of Bills in the House of Lords,* p. 320. Petitions for and against the Bill were presented from Norfolk and London, respectively. No action was taken on the Bill.
11. Townshend to Tucker, 6 May 1752; Tucker to Townshend, 13 July 1752, HMC, pp. 376, 379.
12. Tucker to Townshend, 22 April 1752, HMC, p. 375.
13. Townshend to Tucker, 6 May 1752, HMC, p. 377.
14. The only puzzle about the paragraph just quoted is that Townshend attributes the idea to Tucker, whereas the correspondence makes it clear that it was Townshend who convinced Tucker of the detrimental effects of the corn bounty; further evidence, described later, suggests that it was Townshend who really approached the subject from the libertarian viewpoint.
15. *National Thoughts,* note 3, p. 16.
16. Townshend to Dr. Law, 26 June 1756, HMC, p. 392.
17. Townshend to Dr. Hugh Thomas, 18 January 1755, HMC, p. 386. Lord Townshend's reason for disliking the question actually proposed is somewhat whimsical. The question asked was,

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"What causes principally contribute to render a Nation populous, and what Effect has the populousness of a Nation on its Trade?" Townshend thought well of the first half, as the implied answer was that greater trade would enable a greater population to subsist. The second half, however, suggested that populousness was in turn a cause of greater trade. As nothing could be both cause and effect, the question was absurd, he declared! HMC, pp. 388–90. The prize-winning essay was that of the Reverend W. Bell. It provoked a retort by William Temple of Trowbridge, *A Vindication of Commerce and the Arts* (London: J. Nourse, 1758).

18. *Monthly Review* (March 1751), p. 378; *Considerations concerning taking off the Bounty on Corn Exported . . .* (London: M. Cooper, 1753).
19. Ninetta S. Jucker, ed., *The Jenkinson Papers, 1760–1766* (London: Macmillan, 1949).
20. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. E. Cannan (New York: Modern Library, 1937), p. 480.

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Guns for Protection, and Other Private Sector Responses to the Government's Failure to Control Crime

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I. Introduction

Several years ago, in an episode of "All in the Family," Archie Bunker proposed a possible solution to the airline highjacking problem. He suggested that the government should arm all the passengers. Potential highjackers, fearing for their lives when confronted by a hundred or so armed adversaries, would no longer carry out these crimes. Archie pointed out that all the government would have to do is pass out the guns as the passengers boarded and collect them at deplaning, rather than use the elaborate x-ray and metal-detecting apparatus currently employed to discourage highjacking. More recently, the city council of Kennesaw, Georgia, passed an ordinance requiring all citizens to own a gun in order to deter crime in the community. Both of these instances were obviously meant to be jokes, the first as part of a television situation comedy and the second as an attempt to point out how equally ridiculous is the Morton Grove, Illinois, ordinance, which prohibits the ownership of all handguns. Nevertheless, these two occurrences highlight three issues that will be addressed in this essay:

(1) Firearms in the hands of private citizens are viewed by many to be a possible deterrent to crime.
(2) There is dissatisfaction with the performance of publicly provided crime-control efforts.

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(3) Even though there is considerable discontent with current government law-enforcement policy, most people believe that the solution to the crime problem must involve government (often to an even greater degree than currently exists—i.e., by passage and enforcement of gun control laws), but that government efforts should take a different form.

The discussion that follows supports the first contention—that private ownership of firearms (and other private-sector responses to increasing crime) may be a reaction likely to deter rising violence. In addition, it is contended that violent crime is on the rise, at least in part, because of government failure to support the "public interest." Instead, the bureaucratic crime-control system responds to pressure from politically powerful special-interest groups. Thus, the presentation agrees with the second contention noted above as well—that there is reason to be dissatisfied with government crime-control efforts. It will also be apparent that at least part of the problem of rising crime stems from increasing government involvement in crime control. In fact, private sector enforcement and deterrent efforts (such as increasing ownership of firearms) appear superior to attempts to change and/or expand public sector involvement.

The primary purpose of this presentation is to provide support for these observations. Some of the observed correlation between rising crime rates and rising gun ownership involves causation running from increasing crime to increasing firearm ownership for protection. Furthermore, protective firearm possession is just one of many private-sector responses to the failure of government crime-control efforts, and this private (or free market) production of protection should improve the efficiency and effectiveness of society's criminal justice process.

In order to justify the contentions noted above, two separate topics will be addressed. In the first part of the following presentation, the government failure in crime control is documented in two areas: (1) Government law enforcement efforts respond to the demands of politically powerful special interest groups (including enforcement bureaucrats' demands for more power through expanded criminalization of victimless crimes, and the demands of many other groups for more rights for the accused and prisoners, an end to capital punishment, etc.), rather than to the "public interest," and (2) the incentives of self-interested law enforcement bureaucrats lead to inefficient crime control. Thus, private sector responses to this government failure to meet public needs (such as the purchase of firearms) are not surprising. The second topic addressed below is the implications of these private sector protection efforts. The incentives inherent in the free-market price system, with its profit motive and ability of consumers to choose among competing sources of protection, can be expected to lead to greater efficiency in the production of protection, and there is evidence indicating that these expectations are valid.

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Some readers may feel that this paper is not about gun control, and in a sense they are correct. One point to be drawn from the following presentation is that the "gun control issue" is really part of a very complex broader issue of crime and crime control, and gun control should not be singled out as a potential cure-all. Crime is a problem because of government failure, and giving more power to the government in the form of gun control laws is not likely to reduce crime. In fact, gun control may ultimately lead to more crime.

Prior to a detailed discussion of the above mentioned topics, several points should be made. First of all, public perception is that crime in general, and violent crime in particular, has been on the rise for some time. This is apparent by simply examining the crime statistics reported by the Federal Bureau of Investigation's *Uniform Crime Report.*[1] One should recognize that there may be very significant problems with these statistics, but for the purpose of this exposition these numbers suffice since, as Samuel Walker observed, "Criminologists generally agree that problems with the *Uniform Crime Reports* notwithstanding, a significant rise in the official crime rate began roughly around 1962-63."[2] Furthermore, even if the statistics are totally meaningless (and there *is* no upward trend in actual crime), they are the only widely reported figures provided to the public.[3] Thus, the general public *believes* that crime is on the rise, and people are reacting to that belief. Their reactions include increasing dissatisfaction with the criminal justice system, as well as increasing such private sector protection efforts as gun ownership.

Public opinion surveys indicate that historically there have been high levels of support for the criminal justice system. However, dissatisfaction is on the rise. For example, a recent poll found that only 23 percent of those interviewed had a high degree of confidence in state and local courts, while over one-third of the sample had little or no confidence. Fifty-seven percent of those polled believed "efficiency in the courts" to be a serious national problem.[4] Furthermore, since 1965 the percentage of poll respondents who feel that the courts have not been harsh enough has steadily risen (from 48.9 percent in 1965 to 84.9 in 1978).[5]

As a consequence of such dissatisfaction (or more accurately, as a consequence of the fear arising because of government failure to satisfactorily control crime), private citizens have responded by purchasing firearms.[6] Several researchers have argued that such a response occurs. Feagin contended that fear of crime could be the primary motive for home defense, and consequently for firearm ownership.[7] Even when the fear of crime is put aside, Reiss and Bordua pointed out that those people who believe the criminal justice system is ineffective might take measures to defend themselves.[8] Lizotte and Bordua, in a study of attitudes of firearm owners, found statistically that violent crime in the county of residence was a significant predictor of protective gun ownership.[9] In a subsequent correction that employed more data, several variables including fear of crime, age, sex, race, size, friend's ownership for protection, and violent experiences were found to

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be significant predictions of gun ownership for protection.[10] So, there is support for the assumption that causations may run from either violent crime itself, or the fear of such crime, to firearms, rather than (or perhaps in addition to) vice versa.[11]

Thus, there is definite justification for Kates's contention that protection is a significant purpose for gun ownership (along with sport and crime),[12] and the claim made here that gun ownership is rising in response to rising crime. Many researchers have found a correlation between gun ownership and crime rates and have thus contended that forceful reduction of gun ownership and/or availability will reduce crime. But correlation does not necessarily imply causation running from gun ownership to crime as Kleck, and Magaddino and Medoff point out.[13] It is just as likely that causation runs from rising crime to increasing gun ownership for protection (actually there may be causation running both ways, as Kleck has observed). If that protection is even slightly effective as a deterrent to crime, then forced reduction of gun ownership could actually result in more crime rather than less.

Now then, if increasing firearm ownership is not leading to the rising crime rates, what is? The economic theory of crime proposed by Becker[14] and subsequently expanded upon and tested by several others, indicates that crime rises if (1) the expected payoff to crime rises; (2) opportunities for legitimate income-generating possibilities decline as, for example, in an economic downturn characterized by high unemployment; or (3) the deterrents to crime such as the chances of capture and conviction, and/or the severity of punishment, are diminished.[15] While empirical findings demonstrate that all these factors are clearly important, the presentation that follows will emphasize the third point. There has, over the last few decades at least, been a reduction in the chances of capture and conviction when violent crimes are committed. Criminals are increasingly likely to get away with their crimes. Over the past twenty years, for example, the percentages of reported total crimes cleared by arrest have diminished considerably from 26.1 percent in 1960 to 19.2 in 1980. The violent crime categories show even sharper declines, with murder and nonnegligible manslaughter arrests falling from 92.3 to 72.3 percent of those reported, rape declining from 72.5 to 48.8, robbery from 38.5 to 23.8, and aggravated assault from 76.8 to 58.7.[16] Similarly, total conviction rates in the federal courts peaked in 1952 and have declined since, while dismissal rates have been increasing over the period.[17] Similar trends characterize many state courts.[18] The severity of punishment has also been on the decline. The use of capital punishment has fallen dramatically over the last fifty years, for example. The length of prison terms *actually served* has also diminished, despite the fact that the average length of sentence has been rising.[19] These changes have, in turn, been associated with an increase in crime.[20]

The question then becomes, Why has there been a reduction in crime deterrence? At least part of the answer can be found by examining the demands of

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special interest groups for changes in criminal statutes and in police and judicial enforcement policies, as well as the legislative and bureaucratic response to these demands.

II. Criminal Law as a Political Process

The reduced probability and severity of punishment alluded to above have occurred in part because of governmental responses to the demands of politically active special-interest groups. This claim that criminal law is a political process is not new. As far back as 1922 Roscoe Pound wrote, "Criminal law has a much closer connection with politics than the civil side of the law, and this operates to its disadvantage."[21] Furthermore, the political nature of—and interest group influence on—the criminal justice system has been recognized by many who have examined it.[22] Economists and political scientists have made considerable strides of late in developing a special interest (as opposed to "public interest") theory of government.[23] This theory makes the following predictions:

(1) Legislators and other public officials supply and enforce laws demanded by politically powerful special interest groups.
(2) Effective interest groups tend to be small relative to the population that might be affected by the government activity in question, because of the difficulty of organizing and making decisions when many individuals are involved.
(3) Political power may take the form of votes, money, or the ability to disrupt a politically stable situation with such things as strikes, violence, and disorder.
(4) Interest group members may be very self-interested but they also may be very well intentioned individuals seeking what they feel is "good" for the society as a whole (although their definition of "good" is typically affected to some extent by their personal circumstances).
(5) Bureaucrats (i.e., police, prosecuting judges, prison officials) constitute interest groups that benefit when laws requiring enforcement are passed.
(6) Government responds to interest group pressure by favoring the most powerful group (or groups), but the group will not be favored to the extent that it could be because the marginal political return of a law must equal the marginal political cost in order for an elected official to maintain his support. In other words, conflicting demands tend to lead to compromise, with no group completely satisfied or dissatisfied.

Empirical support for these predictions is also growing, particularly in the area of economic regulation. A number of studies have also examined the impact of interest groups on the passage and enforcement of criminal laws.[24] Space constraints prevent a detailed examination of the entire theoretical and empirical literature, but several studies are relevant to the claim made earlier—that government responses to such demands have led to a reduction in the probability and severity of punishment.

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Special Interest Demands That Have Led to a Reduction in the Probability and/or Severity of Punishment

Raymond Nimmer's examination of the criminal court reform process indicates that the source of court reform is interest group pressure.[25] As a source of such pressure, Nimmer cited organizations of "reform professionals" such as the Vera Institute of Justice in New York City. This institute defines what its members consider to be the needs of the criminal justice system in New York and then designs programs to meet those needs. Such groups are active throughout the country and have formed national organizations to promote reform at the federal level. Many of the well-intended court reforms that such interest group pressure has generated have enhanced the rights of the accused and reduced the chances of punishment. The National Advisory Commission on Criminal Justice Standards and Goals, for example, found that one major factor contributing to increases in serious crime is that courts have applied more stringent standards for admitting evidence without adequately justifying the changes, and often without providing sufficient guidelines for obtaining admissible evidence.[26] David Jones reported that "lower court judges and prosecutors have complained that the 'criminal law revolution' and its aftermath have shackled their ability to bring the guilty to justice," and the resulting reduction in the probability of punishment clearly leads to more crime.[27]

A well-known change in punishment has been the sharp decline in the use of capital punishment. The role of the NAACP's Legal Defense and Education Fund (LDF) in bringing about a virtual end to executions is well-documented. In 1967, class actions initiated by the LDF successfully blocked all executions in Florida, California, and subsequently the entire nation, pending judicial rulings. Since 1967 the LDF has secured nationwide delays in all executions pending resolution of various constitutional issues they have raised in a large number of death penalty cases. As Bedau noted, "Since June 1967, all executions have been stalled, in some cases at the last moment, through concerted action directed from New York by the NAACP Legal Defense and Education Fund. Their efforts in securing appellate review, especially in federal courts, has resulted in a nationwide *de facto* moratorium."[28] The LDF's efforts have been supported by a number of other interest groups as well, including several church groups, the National Council on Crime and Delinquency, the American Civil Liberties Union, and the American Correctional Association, while the Ethical Culture Society and the American League to Abolish Capital Punishment have taken active roles. Thus, the reduction in executions has resulted from well-intended continuous and effective interest-group pressure, primarily through the courts. The reduction in criminal deterrence because of the decrease in the use of capital punishment has, in turn, led to an increase in the number of murders.[29]

It is important to note that the demise of the death penalty does not reflect the opinion of the majority of the population. Studies of public opinion have found

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that when asked about their attitude toward capital punishment, most Americans indicate their support.[30] Obviously this is a case of interest group rule rather than majority rule, even though there is little doubt that the interest groups involved have been seeking changes they feel are in the best interest of the majority.

One point should be evident from the above two examples. Interest groups may have very commendable goals, with no intention of reducing crime deterrence and thereby increasing crime. Protection of the rights of the accused and of criminals, for instance, is very desirable from a normative standpoint that stresses liberty (a normative standard this author adheres to). However, a clear secondary impact of the efforts of these well-intended interest groups is that crime deterrents are diminished and crime rates rise. Thus, a source of rising crime is government actions in response to such interest group pressure. Recall that the purpose of this section of the paper is to offer an explanation of reduced deterrence and rising crime that does not involve rising gun ownership.

Perhaps the most significant investigation in support of the contentions made here concerning the origins of changes in the criminal justice system is an empirical study of changes in the California Penal Code.[31] This excellent study adds considerable support to theoretical predictions of the special interest theory of government and to the contention that interest group demands have led to reduced criminal deterrents and higher crime rates. Thus, this work by Berk, Brackman, and Lesser deserves fairly close scrutiny. The study spans the years 1955–1971. It was found that during the early 1950s the making of criminal law could be characterized as an "agreed bill" process that involved only a few major criminal justice lobbies—generally the California Peace Officers Association (CPOA) (made up of district attorneys, sheriffs, and police chiefs), the American Civil Liberties Union (ACLU), and the State Bar of California. In fact, "lacking more than a rudimentary ability to initiate and shape policy, legislators . . . followed the lead of major criminal justice lobbies."[32] The agreed bill process is one

> in which the important decisions are made exclusively by negotiating lobbies and a few members of the relevant legislative committees. Debates on the floor of the legislature, when they occur, are largely windowdressing for negotiations that have already been concluded. The votes . . . are typically near unanimous—the official stamp of approval for actions undertaken in proverbial "smoke-filled" rooms. In other words, even for relatively controversial bills, the legislative process . . . really takes place outside the public view and involves groups representing a rather narrow range of interests.[33]

In the 1960's a wider range of groups attempted to influence criminal justice, but floor votes still reflected the agreed bill process. The most active groups continued to be the ACLU (and its frequent ally, the Friends Committee on Legislation [FCL]), the CPOA, and the Bar Association, but certain small, vocal, groups of citizens appeared occasionally to initate attempts to alter the Penal Code. Often they allied themselves with the law enforcement interests or the ACLU. In addi-

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tion, several established interest groups whose original purpose was not directed at criminal justice often supported one of the established criminal justice lobbies.

Berk, Brackman, and Lesser went beyond other studies of interest groups' impact on changes in criminal justice by providing statistical support for the contention that this influence is, in fact, extremely important. In their statistical analysis, Berk, and his colleagues chose to look at the influence of what they called the law enforcement lobby (LEL) (primarily the CPOA) and the civil liberties lobby (CLL) (primarily the ACLU and FCL), recognizing that in many cases the principal groups worked in conjunction with others. "Effective influence" was identified in a number of ways. Lobbyists' estimates of their own and their opponents' effectiveness was obtained from newsletters and journals published by the interest groups. Additional information as to lobby effectiveness was obtained from the assessments of journalists, politicians, and criminal justice professionals. Independent evaluations of effectiveness in shaping the Penal Code were then made, and the resulting data were used in the statistical analysis.

The statistical analysis involved use of both zero-order correlations and multivariate analysis. The zero-order correlations indicated that year by year, the LEL had its greatest effect in generating more criminalization (taking more rights from individuals), and some impact on increasing the power of police and prosecutors. The CLL had a substantial positive influence on laws favoring defendants, corrections officials, and the judiciary, and a significant negative impact on the severity of penalties and the power of police and prosecutors. The multivariate analysis reinforced the zero-order correlation results. Both lobbies were effective, but in different areas. The civil libertarians may have been more effective when the two groups were in direct conflict, since the CPOA's "core concern" involved procedure and in those areas the CPOA was relatively ineffective (their greatest effectiveness was in the area of criminalization). Also, the multivariate analysis indicated that the CLL variable had the more significant impact of the two.

Another important finding of the Berk-Brackman-Lesser study was that "public opinion" played no identifiable role in Penal Code revision. The study deemed "inescapable" the conclusion that criminal law was enacted for the benefit of interest groups rather than for the public good. However, no one interest group got everything it demanded. As the interest group theory predicts, there was clear evidence of legislative efforts to balance the costs and benefits when conflicts arose. Furthermore, often as a result of the balancing effort, "the horse-trading endemic to the legislative process produced criminal law that at least diluted and often distorted original interest. . . . Hence, what might have begun as incipient law soon became a hybrid whose content reflected what was politically acceptable." Even though no group dominated, at one time or another virtually every interest group gained through the passage of criminal laws. The ultimate losers had to be unorganized or ineffectively organized individuals.

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Berk, and his colleagues summed up their findings as follows:

> Our quantitative material was especially useful in revealing the behavior of individuals. We saw political actors motivated by highly informed, short-run self-interest, armed with varying resources, aggressively trying to advance their agendas. Yet, few had any global prespective beyond the vague implications of elastic rhetoric and nothing approaching a detailed blueprint for the entire criminal justice system. Thus, our quantitative analysis documented how myriad compromises across a variety of issues changed the Penal Code in fits and starts with hundreds of small increments whose overall pattern seemed totally devoid of any self-contained teleological implications. While particular Penal Code alterations were certainly no accident, it is hard to see their cumulative impact except in that manner . . . few of the individuals whose actions we have described, seriously considered long-run consequences for Penal Code content.

But Berk et al. went beyond establishing the link between interest groups and legislation. They provided an idea of the long-run consequences of interest group influences by using multiple regression to examine the impact of interest-group-induced changes on various crime statistics reported one and two years later.

The statutory changes granting more rights to defendants (changes that were primarily a result of what were obviously well-intended civil libertarian influence) led to reductions in felony arrests and prosecutions (the probability of punishment). Laws increasing the rights and resources of prosecutors (laws generally arising as a consequence of CPOA pressure) had the opposite impact. Finally, CPOA-induced laws leading to greater criminalization were also associated with more arrests and prosecutions. However, this is clearly a consequence of the added illegal acts that could be prosecuted. Unfortunately, Berk et al. did not test to see if increasing criminalization led to increases in or reductions in arrests and prosecutions of previously defined crime. We must draw on other sources to answer this question.

There is an increasing trend to criminalize more and more activities. Attempts to criminalize firearm ownership is an obvious example, but there are many others. As Cole reported, an important

> . . . factor in the crisis of criminal justice is the "law explosion"—the increasing complex and demanding pressures placed on law and legal institutions to resolve conflict in an urban society . . . [included in this] has been the tendency to utilize the criminal law to perform a number of functions for society outside the traditional concerns for the protection of persons and property.

The National Commission on the Causes and Prevention of Violence noted three areas of "overcriminalization," (1) moral statutes such as laws against "fornication between consenting unmarried adults, homosexuality, adultery, and all kinds of abnormal sexual conduct even between married persons," (2) illness statutes "such as the laws punishing intoxication and possession of addictive drugs," and

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(3) nuisance statutes penalizing disorderly conduct and vagrancy. These are typically victimless crimes but they appear to be taking up increasingly larger proportions of the resources of the criminal justice system, thus leaving relatively fewer resources available for control of violent crime. Decriminalization of victimless crimes and "the consequent reduction of pressure on police, courts, and correctional services would have a massive impact on the criminal justice system."

The Berk et al. study provides powerful evidence that interest group demands are a source of changes in criminal justice that lead to increasing crime. Bureaucrats themselves have pushed for increased criminalization. Other groups (e.g., ACLU) demand for the accused and for prisoners more rights that reduce the probability of and severity of punishment. These findings, along with the court reform and capital punishment findings noted earlier, provide compelling support for both the interest group theory of criminal justice and the contention that interest group demands have led to reduced costs of crime in terms of the probability of and severity of punishment. In addition, the Berk et al. findings support the predictions made concerning legislative responses to such demands. In particular, legislatures' primary purpose appears to be an attempt to balance (or compromise among) the demands of special interest groups in order to maintain political support. Naturally, many interest group members believe their demands are in the "public interest," but their perception of the public interest may not reflect the desires of the majority and may even generate results that are counter to the public interest, whatever that may be. (This author's definition of an action truly in the public interest is any action that benefits some members of society without harming any others—the Pareto criterion.) Of course, enforcement bureaucracies and courts ultimately apply (and perhaps alter) whatever laws come from the legislature.

Bureaucrats and Criminal Enforcement

Theoretical examinations of bureaucratic production predict that the incentive structure facing bureaucrats leads them to attempt to expand their size, budgets, power, and influence.[39] In order to do so, bureaucrats wish to avoid competition with other bureaucracies and make every effort to limit the effectiveness of legislative oversight. Naturally, they also act as interest groups and seek laws that will expand their power (this is not meant to imply that bureaucrats do not truly believe that such laws are in the public interest, but such beliefs would simply reinforce the incentives noted above).

Two of these conclusions of the theory of bureaucracy have already been upheld by considerable evidence. That bureaucrats attempt to expand the size and power of their agencies is supported by the fact that as interest groups, bureaucrats demand increases in criminalization and therefore more power. As Berk et al. noted, ". . . contending parties were considering their interests not only in narrow

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criminal justice terms but in the context of . . . bureaucratic empire building, the next election, and the earning and spending of political capital,'' and one outcome was a ''constant pressure for growth in power and pervasiveness of the criminal justice system. The pool of potential resources is expanded by expanding the criminal justice system itself.''[40] This also supports the theoretical conclusion that bureaucrats act as interest groups. Ample evidence of this has already been presented.

However, considerably more support exists for the conclusion that a strong incentive of bureaucrats is to increase the size (i.e., level of enforcement) of the bureaucracy. For example, in his examination of the plea bargaining process, Jones found that prosecutors' incentives are tied to maximizing the number of *criminals convicted,* and this has become their major concern. This effort actually appeared to increase the number of crimes committed by each individual criminal, however, because

> despite the rhetoric, very few prosecutors in the United States seem to be concerned at all with obtaining a conviction of one charge relating to each separate criminal episode (transaction) in which a defendant is known to have participated. For this reason, it is to the advantage of the sophisticated and persistent offender (and he knows it) for him to perpetrate as many separate criminal transactions as possible between the moment he commits the first and the time he is imprisoned, as well as during virtually all periods of pretrial or postconviction release.[41]

Other researchers have also found evidence of criminal justice bureaucrats' concern with measurable output and power rather than justice per se. In his oft-cited work, Blumberg reported one problem that arises from this bureaucratic desire to generate measurable output. Police, prosecutors, and courts tend to concentrate on those cases which are easiest to process and, ''as a result, we have spent much of our limited resources in the prosecution of addicts, alcoholics, prostitutes, homosexuals, gamblers, and other petty offenders, simply because they are readily available and produce the desired statistical data that indicate 'production.'''[42] Blumberg's findings reinforce observations made earlier. Recall that a principal source of interest group demand for increased criminalization has been the criminal justice system bureaucrats. Blumberg's findings point out why—bureaucratic statistical indicators of size and output are more easily expanded when ''victimless crime'' statues are enforced rather than laws dealing with crimes of violence, and these statistical indicators appear to be a major bargaining chip in bureaucratic efforts to obtain more power. Thus, overcriminalization clearly is one explanation of reduced probabilities of arrest and prosecution for *violent* crimes, and therefore, for the rising rates for such crimes.

Eisenstein's findings support Blumberg's conclusions. He found that ''for most prosecutors, the conviction rate is the prime concern. It consequently becomes more important not to lose than to win. Many prosecutors prefer to dismiss the

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case or to plea bargain generously rather than to chance losing.''[43] This appears to be a much better explanation of the existence and extensive use of plea bargaining than the reason offered by most prosecutors and judges. The large caseload and backlog are the most commonly cited justifications for the ''need'' for plea bargaining. However, Jones's study of plea bargaining indicates that such excuses are not valid.

A complementary and similarly invalid excuse often given is that rising crime rates (which create excessive caseloads) necessitate plea bargaining, but the historical data Jones examined created substantial doubt about this claim. The rate of serious crime has increased progressively for nearly thirty years, but guilty plea rates have remained virtually constant for at least forty and possibly up to seventy years. Furthermore, Jones reported that guilty plea rates do not seem to be a function of caseloads. Rather, he found that an artificial quota exists in almost every American jurisdiction on the portion of pending criminal cases that will be taken to trial in a given period, and these quotas have remained at virtually constant percentages for forty to perhaps seventy years.[44] Of course, bureaucrats have every incentive to claim that plea bargaining at its current (and historic) levels is necessary because of the higher crime rates and caseloads that tax the bureaucracies' limited resources. In this way they can apply pressure for increased budgets and add leverage to their other demands. At the same time, however, criminals have incentives to commit more crimes, once they have committed one. Thus, bureaucratic responses to their incentives tends to lead to more crime.

Perhaps the most important conclusion—and one that deserves reiteration—of the theoretical analysis of interest group government and bureaucratic performance is that government policies represent private interest rather than the public interest. This implies that politicians and bureaucrats do not want their policies and procedures to be easily understood by the general public. A number of studies of criminal justice bureaucracies have found bureaucratic secrecy to be commonplace. Alan Bent, in his discussion of police, found that ''the police have long practiced bureaucratic secrecy to the exacerbation of relations with the community . . . . True to the bureaucratic practice of maintaining barriers between itself and the public, police officials have resisted investigations of their internal affairs and attempts to impose controls over their activities.''[45] In his examination of state felony courts, Eisenstein reported similar behavior on the part of prosecutors and judges.[46] This secrecy serves the purpose of making it difficult for non-interest-group members to discover what bureaucratics are doing and ''who is getting what'' from the government, but it is also an obvious attempt to limit the effectiveness of legislative monitoring and control of bureau production. Such secrecy can lead to more crime, however. If bureaucratics are not monitored closely and if bureaucratic secrecy, which abounds, tends to limit the effectiveness of monitoring by private individuals and legislators, then self-interest motives may really take over—and corruption results.

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Political corruption is actually just a black market for the rights over which politicians and bureaucratics have been given allocative power.[47] Rather than assigning rights according to political power, rights are sold to the highest bidder. There is an extensive literature on police corruption that will not be examined here, but one point is worth stressing. One factor that enhances the possibility for corruption is the overcriminalization discussed earlier. As Bent noted, "The overload of statutes invites the influence of prejudices of individual police officers . . . resulting in the law being administered unevenly and selectively. . . . Additionally, the unparalleled autonomy and authority possessed by police officials makes bureaucratic secrecy dangerous. . . . Secrecy impedes accountability in a fundamental way by obscuring illegal and arbitrary acts [by police]."[48] Thus, discretionary power because of overcriminalization in combination with bureaucratic secrecy create considerable opportunity for corruption. It should not be surprising, given the economic theory of crime, that if bureaucratic secrecy keeps the probability of detection and punishment low, corruption will abound and add to the crime statistics.

The above discussion is far from a complete accounting of governmentally generated sources of rising crime. However, it should be sufficient to indicate that crime rates are rising, at least in part because of government actions. Clearly, under such circumstances, gun controls cannot be considered a cure-all for the crime problem. Since government activity in law enforcement reflects the desires of interest groups, including those in the government, discontent among private citizens should not be surprising. Perhaps there is a better way—privatization of protection against crime.

III. Private Sector Responses to Rising Crime

With the failure of the government—documented in the previous section—to provide criminal enforcement that is motivated by "public interest," and with the resulting rise in crime (caused by government failure rather than gun ownership), private sector production of crime protection appears to be a superior approach. Many individuals (and communities), out of frustration with public sector inefficiency, are in fact opting for private enforcement techniques. The increasing ownership of firearms for protection is but one example. Private sector production of crime detection and prevention can be characterized as a growth industry in the United States (and in much of the rest of the world). Let us examine the growth of some of the private efforts.

The most obvious and visible example of private sector production of protection is the private security industry. Sherman pointed out that "few developments are more indicative of public concern about crime—and declining faith in the ability of public institutions to cope with it—than the burgeoning growth in private policing."[49] An estimated one million people were employed for private security

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in the United States during 1982 as compared to 650,000 public law enforcement officers.[50] In 1976 approximately $6.6 billion was spent on private guards, an increase of 46 percent in five years, and "in essence, most of the growth can be attributed to increases in crime in the United States."[51] A 1982 estimate put expenditures on private police at $10 billion annually.[52] These private police are employed primarily by individuals and firms. However, recently an entire neighborhood in St. Louis bought the streets and hired private police to protect the area.[53]

In addition to the purchase of protection services from private firms, individuals are increasingly supplementing government protection with efforts of their own. This often involves purchases by individuals of capital or training to enhance their ability to protect themselves. Fear of crime is inducing more and more citizens to buy firearms for protection, for example.[54] Burglar alarms are being installed and guard dogs purchased. Approximately $5.3 billion in intruder-detection sales alone are anticipated by the industry for the 1980–85 period, with half those purchases being made in North America.[55] Individuals are learning self-defense, carrying whistles and other noisemakers, and buying such self-protection devices as personal tear-gas dispensers (Chemical Mace). There is a growing business in the provision of bulletproof cars and security systems for those in positions of power and wealth who face high risks of assassination or kidnapping. There are about a dozen U.S. firms now specializing in armoring cars, for example, at prices ranging between $32,000 and $250,000, depending upon the degree of safety required, and many other privately provided forms of protection equipment and services are available to those willing to pay.[56]

Private individuals' protection efforts need not require monetary outlays for services and equipment, of course. Activities like neighborhood or tenant watches and patrols (including the Guardian Angels) and escort groups are becoming increasingly prevalent. A recent Gallup poll found that 17 percent of those surveyed reported participation in one or more of these voluntary neighborhood crime prevention efforts, leading Lawrence Sherman to conclude that "the recent emphasis on voluntary watching efforts suggests a diminishing confidence in the ability of the publicly empowered police to perform."[57]

The burgeoning markets for private security protection services, intruder detection devices, and self-defense devices and training, along with the growth of private sector voluntary crime prevention efforts, indicate that gun ownership for protection is an obvious component of the overall privatization trend. Thus, we have a logical a priori reason to expect a causal relationship running from rising crime to increasing gun ownership.

Causality running from crime to guns (and other private sector protection efforts) does not necessarily imply that gun controls are not desirable. If privatization of protection, including gun ownership, is an ineffective or inefficient means of protecting people, then this question of causality may be irrelevant. Evidence

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of private efforts in response to crime clearly damages the main argument made by gun control advocates (that guns cause crime, ergo gun control will reduce crime), but if private protection efforts are ineffective and excessively costly, then perhaps we should protect people from wasting their money in these areas. Rushforth et al., for example, claim (without any support) that "this goal of security through gun possession is illusory."[58] Is this true?

The Benefits of Private Sector Crime Prevention and Protection Efforts

There are many reasons to expect that private sector crime prevention and protection efforts will be both relatively effective and relatively efficient as compared to public sector efforts. The private sector tends to be relatively effective because of specialization that improves productivity. Private sector efficiencies arise from this specialization, but efficiency is also enhanced because private sector individuals tend to be much more cost-conscious than public sector bureaucrats. Additional benefits may arise from privatization as well, since many private sector efforts will tend to make public protection more effective and efficient. Private sector crime prevention activities are often complements to public police and therefore improve the police's ability to prevent or solve crimes. In addition, sufficient competition from the private sector may force bureaucrats to make a greater effort to produce at low costs. Let us explore each of these potential benefits in turn.

Privatization and Specialization

Public police perform many functions that have nothing to do with prevention of, or protection against, violent crimes and crimes against property. In Blumberg's words, "Much police work is of the social worker, caretaker, babysitter, errand boy variety; almost 80 percent of police time is expended in this fashion."[59] The police are responsible for such matters as traffic control; aiding injured, lost, and helpless individuals; and enforcing nonviolent "victimless" crime laws such as those against prostitution, gambling, marijuana use, and so on. With so many duties to perform, police may not be able to gather the expertise in any one area (e.g., violent crime categories) that a private specialist can. Of course, large police departments do undertake a great deal of specialization with their homicide, burglary, robbery, vice, narcotics, and traffic divisions, but even these police departments must concentrate at least some manpower, and therefore police time, in nonviolent and nonproperty crime areas (e.g., vice, narcotics, and traffic), and police are always expected to provide information and assistance to virtually anyone who demands it.

One big advantage of private sector crime prevention and protection efforts is that they can be very specialized. Private individuals can concentrate their resources, and those that they hire or purchase, in areas they perceive to be the greatest threat to themselves and/or their property, rather than in areas desired

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by special interest groups. Naturally, then, private sector efforts will be concentrated on (that is, specialized in) prevention of, and protection against, violent crimes and property crimes. This concentration of effort can be very effective. Consider, for example, the success of the railroad police.

Dating from the end of World War I, railroad police were complete and autonomous police forces. Wooldridge observed that

> railway police compiled a remarkable record of effectiveness: between [the end of WWI] and 1929 they succeeded so well that freight claim payments for robberies decreased 92.7 percent, from $12,726,947 to $704,262. . . . Statistically, arrests by railroad police have resulted in a higher percentage of convictions than those of their municipal counterparts. A five-year sample from the Pennsylvania Railroad showed an 83.4 percent conviction rate, while a thirteen-year sample from another line revealed a conviction rate of 97.47 percent.[60]

The railroad police have a "widespread reputation for good character and high ability," which "poignantly contrasts with the present status of many big-city public forces."[61] Wooldridge noted that primary reasons for the success of the railroad police are that they specialized in one area of enforcement and, in the process, developed "an expertise not realistically within the grasp of public forces."[62] Such specialization and consequent gain in proficiency (and efficiency) often characterizes existing private sector police firms.

Similar gains from specialization should also arise when individuals concentrate their own efforts and resources in areas from which they face the greatest threat. If a person perceives a significant threat of burglary, then he may purchase a burglar alarm and substantially reduce that threat. If he fears violent crime, he may wish to make purchases that enable him to better protect himself, like training in self-defense or a Mace dispenser, or a gun. These purchases of specialized equipment are really no different from a banker hiring an armed guard and installing cameras and alarms. Such specialization has two impacts. First, it makes it less likely that a criminal will be successful in his attempt at theft and violence. In other words, increasing levels of private protection efforts increase the potential cost of crime by increasing the probability of capture (or in the case of guns for protection, the probability of personal injury or death for the potential criminal). This leads to a second impact of such private efforts. As the potential cost of committing crime rises, potential criminals are less likely to become actual criminals. In other words, there is a deterrent impact of such private sector protection.

Unfortunately, most studies of crime deterrence have been concerned with the effects of public sector efforts. However, there is some evidence that private sector production of protection does deter crime. One interesting study along these lines was done by Timothy Hannan.[63] Using a Tobit maximum likelihood statistical procedure, he found that the presence of guards in banks "significantly reduces

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the risk of robbery. Accepting point estimates, the magnitude of this reduction is approximately one robbery attempt a year for those offices which would have otherwise suffered a positive number of robbery attempts."[64] This empirical result supports findings obtained by G. M. Camp, who interviewed imprisoned bank robbers.[65] Camp found that most of the robbers (77 percent) checked to find out whether the bank had a guard before committing the robbery. In contrast, only 6 percent of those interviewed bothered to learn the police routine in the area before the robbery. One implication is that these criminals were more concerned with this private protection measure than with public enforcement (although another is that information about police routine is both more costly to obtain and less valuable because police change their routine).

Firearm ownership is a very specialized form of protection that clearly generates benefits detailed below in the form of preventing successful completion of crimes, as well as deterring crime. In John Sneed's words,

> As in any other industry [other than crime prevention and protection], there will be specialization on the basis of the economies to be derived from the division of labor. Each consumer will balance his purchases of protection services [and those provided by public police] relative to self-supplied defense so as to maximize his utility. For example, many purchasers of personal property defense will keep a gun in their homes in order to deal with situations where delayed action by a specialist [private or public police] is useless or less preferred than immediate, though more risky, action by a nonspecialist.[66]

Sneed raises a number of important points here about the role that gun ownership for protection may play in the overall privatization picture. For one thing, it allows the individual to respond very quickly to a crime situation. The response is generally much more immediate than public police are able to provide.

There is some evidence to indicate that the immediate response of gun owners can be quite effective. Private citizens *legally* shoot almost as many criminals as do police, and in some places citizens justifiably kill up to two or three times as many violent criminals as do police. There were 126 justifiable homicides by private citizens in California during 1981, for example, as compared to 68 justifiable homicides by police.[67] In addition, there are many more nonfatal than fatal justifiable assaults. The numbers here are very difficult to come by, of course, but an approximation might be gained by considering that there are an estimated thirty-eight nonfatal handgun assaults for every fatal one.[68] If approximately the same ratio holds for justifiable assaults as for all assaults, then about 38×126 (4,788) justifiable assaults would have occurred in California alone in 1981.

Although information on the relative success of private use of firearms to interrupt crime and apprehend criminals is very scarce, it appears that such private efforts are at least as successful as police efforts. Kates compared the success rates of police and private citizens by examining every story printed in forty-two

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of the nation's largest newspapers between January and June 1975 and between May and July 1976 that were concerned with uses of firearms for protection or prevention of crime. He estimated that 68 percent of the times in which police used their firearms, they successfully prevented a crime or apprehended a criminal, while private citizen firearm use resulted in an 83 percent success rate.[69] So it seems apparent that the private use of firearms for crime protection does generate benefits in contrast to the claims made by some (e.g., Rushforth et al.). Of course, as Sneed notes in the above citation, firearms for protection is a somewhat risky means of protection. If the risk to the individual exceeds the benefits, then gun controls may be desirable. However, Carol Silver and Don Kates have presented some evidence indicating that the use of handguns for protection may be very beneficial relative to the risk to society arising from criminal handgun use. They concluded that it "appears that the number of instances in which handguns were used for defense exceeds the number in which they were misused to kill [between 1960 and 1975] by a factor of 15–1."[70] If handgun use for defense outstrips handgun use to kill by anything close to that amount then the risk of death associated with handgun use for defense is clearly quite small.

Furthermore, the above discussion does not consider one of the most important benefits arising from gun ownership for protection—the deterrent effect. Naturally the deterrent effect cannot be accurately measured, since we cannot count the number of crimes not committed for fear of confronting an armed victim. However, there is some powerful evidence that gun ownership deters crime. Let us begin with what may be the weakest evidence and advance through the most convincing. Philip Cook used cross-section data and looked at the relationship between armed robbery rates and the strength of gun controls.[71] He found that areas with strong gun controls have higher levels of armed robbery than areas with weaker controls. One might interpret this to mean that when individuals' ability to defend themselves with guns is limited, they become more vulnerable to crime and therefore are more likely to become crime victims. That is, gun ownership is a deterrent. Of course, there is a danger in such an interpretation. After all, as stressed throughout this paper, correlation does not necessarily mean causation. In this case the correlation may arise because the strictest gun controls have been established in high crime areas in an unsuccessful effort to reduce crime.

There is more persuasive evidence of a deterrent effect arising from gun ownership, however. For example, surveys of prisoners "uniformly find felons stating that, whenever possible, they avoid victims who are thought to be armed, and that they know of planned crimes that were abandoned when it was discovered that the prospective victim was armed."[72] This is not surprising in light of the risk criminals face when confronting an armed victim. Cook provided us with an idea of the magnitude of this risk with his calculations based on Atlanta data. He concluded that a robber doubles his chances of dying by committing only seven robberies, because of the risk of being attacked by a victim.[73]

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Some of the best evidence of the deterrent effect of gun ownership for protection comes from the impact of publicized programs to provide training in firearm use for potential victims. One such effort was sponsored by the Orlando police department between October 1966 and March 1967. The program was designed to train women in the safe use of firearms because of the sharp increase in rapes in the city during 1966. This program was widely publicized in Orlando newspapers. Kleck and Bordua recently examined the deterrent impact of this publicized training program.[74] They found that the rape rate in Orlando fell from a 1966 level of 35.91 per 100,000 inhabitants to only 4.18 in 1967. This was clearly not a part of any general downward trend since the national rate was increasing, and rates in surrounding metropolitcan areas and Florida as a whole (excluding Orlando) were either constant or increasing over the same period. Furthermore, this decrease did not reflect a continual downward trend for Orlando since the trend had been erratic but upward for the previous several years. It seems obvious that the knowledge that potential rape victims might be carrying a gun and might know how to use it was a significant deterrent.

Further evidence of the deterrent effect of the Orlando program can be obtained by comparing the change in the rape rate, which was the crime category targeted by the program, to other Orlando crime rates.[75] Rates for virtually all crimes were rising or constant in Orlando, the surrounding metropolitan area, and Florida over the 1966–67 period. There was one exception: The Orlando burglary rate also declined. But this is not particularly surprising. In fact, it tends to strengthen the argument that gun ownership for protection has a deterrent effect, since burglary would seem to be the most likely crime category other than rape in which a criminal might confront an armed female victim.

The Orlando example is not unique. Publicized training programs in the use of firearms have led to a reduction in armed robberies in Highland Park, Michigan; drugstore robberies in New Orleans; and grocery store robberies in Detroit.[76] When potential criminals become aware that potential victims might be willing and able to protect themselves with a gun, the increased perceived risk of committing a crime can lead to the abandonment of the crime effort. Of course, it may also lead to the choice of another victim, perhaps in another area where guns for protection are less likely. As a consequence, location-specific gun control could easily lead to higher crime rates in that area, as the Cook results cited earlier may imply.

This brings up an important point. Wealthy individuals typically have many options at their disposal when it comes to protecting themselves. For one thing, they often live in high income communities where the tax base allows for a well-financed public police department. The number of police per crime committed is probably very high in most high income suburbs, relative to most inner-city low income neighborhoods. In addition, wealthy individuals can buy alarms, guard dogs, bulletproof cars, etc., and they can hire private police for protection. No

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gun control advocate has contended that private police should have their rights to carry firearms limited, so gun control laws will not be very limiting as far as the wealthy's self-protection efforts are concerned. The impact could be significant for middle and lower income individuals, however, because they typically are not as well protected by the public police and they have far fewer self-protection options available because of their relatively limited buying power. As evidence of the relative importance of guns for protection for lower income individuals, note that of the 126 justifiable homicides by private citizens in California during 1981, 28.6 percent were committed by Hispanics, 47.6 percent by Blacks, and only 21.4 percent by Whites.[77] There is certainly no reason to expect that certain races are more likely to be crime victims or to kill criminals than other races. However, a much larger percentage of Blacks and Hispanics are in the lower income classes in California than are Whites, so we might conclude that lower income individuals, approximated here by Blacks and Hispanics, tend to turn to firearms for protection more often than higher income individuals simply because their choices are much more limited. In addition, of course, they are more likely to be the victims of crimes, so they are more likely to seek some means of self-protection.

If strict gun control laws are passed, many lower income individuals will be forced to choose between giving up their primary tool for protection of their persons and property, or becoming criminals themselves by disobeying the gun control law. Faced with such a choice, and realizing that gun control laws will be virutally unenforceable anyway (as Kates has pointed out[78]), most will probably choose to disobey the law.

Before proceeding to another issue, one other piece of evidence of the deterrent impact of gun ownership for protection must be mentioned. As noted earlier, the city council of Kennesaw, Georgia, passed a highly publicized ordinance on March 15, 1982, that required each household to keep a firearm. The ordinance, just like a gun ban, is probably unenforceable, but the publicity surrounding its passage apparently provided potential criminals in the area with the knowledge that many Kennesaw residents owned firearms and were willing to use them for protection. Consequently, crime in Kennesaw has dropped at what has to be called a dramatic rate. Serious crime in Kennesaw dropped by 74.4 percent from 1981 to 1982.[79] Residential burglaries fell from 55 in 1981 to 19 in 1982, while aggravated assault was down from 9 to 2, rapes fell from 3 to 0, armed robbery declined from 4 to 0, and homicide from 1 to 0. In the seven months immediately following the passage of the ordinance there were only 5 burglaries as compared to 45 during the same seven-month period during the previous year.[80] Perhaps the Kennesaw ordinance was not a joke, after all! Reviewing the evidence from Orlando, Kennesaw, and other sources led Kleck and Bordua to conclude,

> Given the data on private citizens' use of firearms against criminals and evidence on the slight risks of legal punishment associated with most crimes,

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> it is a perfectly plausible hypothesis that private gun ownership currently exerts as much or more deterrent effect on criminals as do the activities of the criminal justice system. The gun-owning citizenry is certainly more omnipresent than the police, and the potential severity of private justice is at least as severe or more severe than more formal legal justice, given the frequency of citizen shootings of criminals and the de facto near-abolition of capital punishment by the federal judiciary. In short, there is the distinct possibility that although gun ownership among the crime-prone may tend to increase crime, gun ownership among the noncriminal majority may tend to depress crime rates below the levels they otherwise would achieve.[81]

Gun ownership in particular, and private sector crime protection and prevention efforts in general, do appear to have considerable benefits, then—benefits arising from specialization, which tends to increase the likelihood that attempted crimes will be unsuccessful and to deter potential crimes. Such private sector specialization overcomes one source of the government failure documented in the previous section of this paper—the impact of special interest groups on the allocation of resources used for prevention of and protection against crime. There are other benefits as well, as indicated by Sneed. Competition for consumer protection dollars among alternative sources of protection is one factor that indicates that private sector protection efforts will be produced relatively efficiently. There are other factors as well.

Privatization and Production Efficiency

Private sector production of protection is likely to be relatively efficient in a cost-effectiveness sense, when compared to public sector production. The reasons are obvious and widely known. One such reason for private sector efficiency stems from the fact that private firms that produce protection services and devices can survive only if they make a profit. In an effort to make a profit, the private entrepreneur will attempt to produce the level of protection demanded at the lowest possible cost. If he is successful, he reaps the benefits, since he retains the excess profit. Citizens do not expect a public police department to make a profit, however. Taxes are collected to cover costs. Thus, the police department survives no matter what those costs might be (at least up to some level, as noted below). Since the police chief does not have to make a profit to survive, he has much weaker incentives to be concerned about production costs. Furthermore, he reaps no special reward by successfully producing at the lowest possible cost, since he cannot retain the profit. His cost-minimizing incentives, therefore, are extremely weak relative to a private producer. But the problem is even more severe than this. As noted in the previous section of this paper, bureaucratic producers have incentives to expand the size (and therefore the production costs) of the bureau. Thus, public police tend to produce a nonoptimal mix of enforcement services at relatively high costs.

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The expectation of more cost-effective production by private sector firms is borne out. In fact, budget pressures are forcing many community officials to consider at least partial private-sector provision of services typically provided by public police.[82] Recently, virtually complete privatization of police services has taken place in two communities. Reminderville, Ohio (and the surrounding Twinsburg Township), contracted with a private security firm in 1980. This arrangement was established following an attempt by the Summit County Sheriff's department to charge the community $180,000 per year for the emergency response service and an occasional patrol by one car, both of which it had been providing. The community turned to a private firm, Corporate Security, for help. For $90,000 a year the firm provided twice as many patrol cars and an emergency response within six minutes, as opposed to the sheriff department's 45-minute response time. The firm selects trained, state-certified candidates for the police positions, and the village chooses among the candidates. Corporate Security then pays the salaries of the seven chosen officers; provides and maintains two patrol cars; maintains the department's electrical, communications, and radar equipment; and carries the auto and liability insurance for the police force. The 1980 contract has been renewed once at only a slightly higher yearly fee, and a third contract will be negotiated soon.[83] The arrangement has been challenged by the Ohio Police Chiefs Association, but they have not been able to find anything in Ohio law to prevent it. The community is well satisfied with their private police force. In fact, despite many arrests, traffic tickets, and other actions typical of police, no complaints or charges have been registered.

A similar, but even more completely, private sector police force was established in Oro Valley, Arizona, in 1975. In Reminderville, the village officials maintained full autonomy in hiring, firing, disciplining, and organizing the police force; but Rural/Metro Fire Department, Inc., a private firm that provides fire protection for approximately 20 percent of Arizona's population, agreed to take responsibility for full operations management of Oro Valley's police force and to replace services previously provided by the county sheriff. Rural/Metro kept all the records required by the state and decided what equipment and how many officers were needed, what salaries to pay, and when to use nonpolice personnel (e.g., routine work like writing parking tickets and directing traffic was not performed by police officers). All these services were provided for $35,000 per year. As a consequence of policies established by Rural/Metro's police chief (e.g., twice-a-day check of homes whose residents were away), burglary rates in the 3.5-square-mile town dropped from 14 to 0.7 per month and stayed at that level.[84] The Oro Valley-Rural/Metro arrangement was challenged by the Arizona Law Enforcement Officers Advisory Council, which argued that under Arizona law an employee of a private firm could not be a police officer. Rural/Metro decided that they could not bear the high court fees required to fight the challenge, so in 1977 the arrangement was ended. The 1982 Oro Valley police budget was

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$241,000 as compared to the $35,000 price tag for Rural/Metro's provision of police services in 1975. Inflation might account for a doubling of the cost of these services over seven years, but it cannot account for the 500 percent increase in costs. Theodore Gage's conclusion that "in short, Oro Valley has become a typical police operation with typical costs"[85] seems warranted.

The profit motive provides strong incentives to produce at low costs. There is another reason to expect efficiency in regard to private sector production of protection. This reason does not apply to the above examples of government purchase of police services (which are only intended to serve as illustrations of the lack of incentives on the part of public police to minimize production costs), but it clearly could apply if the communities had held competitive bids before awarding the contracts.

The reason is that private sector producers of protection are often subject to competition. Since consumers are free to choose among private protection options, the only way that a private firm can legally obtain customers is by persuading people that they offer a quality service at a reasonable price. Government producers of protection have another option—they can use the government's power of coercion to collect taxes and produce protection, whether it is valued at the price paid or not.

Resources are most efficiently used when they are guided to the use that generates the greatest benefit to members of society. Competitive markets tend to guide resources to their highest and best uses, because the price consumers are willing to pay for a good or service reflects the benefits they expect to obtain from its consumption. Public police departments are *not able* to take advantage of price signals in deciding how to allocate resources, and they really do not have any other signals as effective as prices for telling producers what consumers want. Private providers of protection service and equipment, on the other hand, are *forced* to pay attention to price signals. Gustave de Molinari, a nineteenth century French economist and perhaps the earliest advocate of protection provided by the private sector, stated that the "option the consumer retains of being able to buy security wherever he pleases brings about a constant emulation among all producers, each producer striving to maintain or augment his clientele with the attraction of cheapness, or of faster, more complete and better" services.[86]

The importance of price signals and competition for clientele should not be overlooked in a discussion of efficiency. Most police departments have not perceived the pressures of competition (except in terms of competition for a share of the budget that other bureaucracies are also seeking), since their clientele (taxpayers) is guaranteed. However, all private sector firms selling protection services or devices must compete for consumer dollars. Consumers then choose among all the options available. If, under these circumstances, a consumer decides to buy a gun for protection, then that decision implies a rational, efficient allocation of protection resources. Such a decision reflects the previously noted fact

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that a firearm is a specialized tool of protection that provides benefits the public police (and many other private protection options) cannot provide. Thus, private sector production of crime prevention and protection also would eliminate the second source of government failure documented above—bureaucratic inefficiency.

Competition has beneficial efficiency impacts, since it forces private sector providers of protection service and equipment to keep costs and prices down and the quality of their products up. If competition among private firms can also be directed at public police, there may be some positive efficiency gains there as well (although we must keep in mind that government production, whether produced at the lowest possible cost or not, reflects the demands of special interest groups rather than individual consumers).

Privatization and Public Sector Efficiency

Theoretical examination of bureaucratic production suggests one way to improve bureaucratic performance (and perhaps lower crime rates)—competition for law enforcement bureaus. This is one control device available to legislatures in their efforts to force politically desirable production, and legislatures obviously have used this control device by creating many competitive bureaus. For example, Frederick Kaiser reported that "presently, more than 110 Federal agencies with a combined budget of $5 billion participate in police, investigation, and law enforcement activities. This collection of often-competing units . . . is characterized by fragmented authority and overlapping jurisdiction."[87] In addition of course, virtually every political jurisdiction has its own police and court bureaucracies. But suppose that local governments all over the country also had the legal right to contract with private firms for the provision of police services (as they do in Ohio, but perhaps do not in Arizona). As the threat of private contracting became apparent to public police departments we should see considerably more attention being paid to efforts at reducing costs for the level of service quality being supplied. This is an extreme example meant to illustrate the potential impact of expanding private sector production of protection services. Competitive pressures should arise, however, and cost reducing incentives result, without going this far. As citizens turn to the private sector in increasing numbers in order to supplement the protection they receive from the public sector, they should come to realize that privatization has advantages. In particular, private sector protection will be specialized and consequently relatively more effective than public police at protecting individuals from the crimes they fear the most. Furthermore, private sector efforts will generally be available at relatively low cost. Therefore, citizens will become increasingly reluctant to pay taxes for public protection. The threat of loss of budgets and jobs may become sufficient enough for public police to have stronger cost-monitoring incentives. So, some of the benefits of private sector competition may spill over into public sector production.

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Of course, more efficient bureaucratic production simply means that the demands of special interest groups are more accurately met. In meeting these demands, some dissatisfaction with government criminal enforcement will dissipate—the dissatisfaction coming from interest groups whose demands are not efficiently met without such competition. As long as consumer dollars pass through government hands, the desires of individuals will be downplayed and the demands of interest groups will be met. So efficient production (or more accurately, cost-minimizing) by government bureaucrats will not yield the same bundle of services as efficient private-sector production would.

Naturally, bureaucrats try to avoid competition from both the private sector and other public sector bureaus. It was noted earlier, for example, that organizations of public police attempted to prevent Reminderville, Ohio, from contracting with a private police firm, and successfully challenged private police arrangements in Oro Valley, Arizona. Furthermore, police administrators tend to have a "marked distaste" for private security systems.[88] Some police officials have also lobbied for gun controls, although a majority of police oppose such laws. Most police do, in fact, support some types of privatization, because the benefits for police generated by such private sector efforts outweigh the costs arising from the threat of competition.

Many of the private sector activities that are developing are actually complementary to public sector production. Neighborhood watches and patrols, for example, generally involve private cooperative actions by individuals in a particular area in an effort to deter crime by visibly patrolling. However, when a crime is observed, the private individual on patrol calls the public police. Since crimes are more likely to be observed in progress than discovered after completion, the police are more likely to apprehend and successfully prosecute the criminal. Thus, neighborhood watches are likely to reduce crime in the area because of the deterrent effect of the visible patrol, but they are also likely to increase the effectiveness of the police in solving crime actually committed. It is not surprising to find police departments actively supporting neighborhood watch organizations and aiding in their formation.

Many private sector efforts are complements to and improve the effectiveness of public police. "Operation ID" involves individuals marking their property so that it can be easily identified when stolen. Such projects have been actively promoted by police departments in many communities, because they increase the likelihood of catching a criminal after a robbery when he tries to sell the stolen property. However, for our purposes, perhaps the most interesting private-sector crime protection activity that serves as a complement to the public police is gun ownership. As noted earlier, gun ownership is a specialized form of self-protection. It allows the individual to respond much more quickly to a crime in progress than can the public police, given its characteristic response time. In fact, "the

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odds are better than 1000-to-1 that the officer won't be there when [a crime] happens; indeed, most violent criminals will do some scouting and make sure there are no policemen around."[89] The potential for a relatively quick response by a gun owner increases the likelihood of apprehending the criminal. In light of this, it is not surprising to find an overwhelming majority of police officers opposing gun control. A number of polls by police and independent organizations indicate that this is the case. One such poll, performed by the Second Amendment Foundation in 1977 and verified by the GMA Research Corporation, found that approximately 64 percent of the 34,000 police officers surveyed believed that an armed citizenry serves as a deterrent to crime, 86 percent indicated that even if they were not police officers they would keep a gun for protection, and more than 83 percent indicated that banning handguns would benefit criminals rather than citizens.[90] A 1976 survey commissioned by Boston Police Chief Robert di Grazia (an active gun-control advocate), and conducted by the Planning and Research Division of the Boston Police Department, found that over 66 percent of the nation's leading police administrators favored possession of handguns by the citizenry, and 80 percent approved of possession of handguns in homes and business places.[91] So, the majority of public police believe that gun control will help criminals and hurt noncriminals, since gun controls will reduce the private citizen's ability to protect himself and make it more likely that a criminal will be successful in his crime efforts. These benefits of guns for protection apparently outweigh whatever threat of competition most police perceive (as well as the potential for bureau growth that might arise if police were able to enforce gun control laws).

Thus, it appears that privatization of protection, including gun ownership, can have positive spillover impacts on the success of public sector law enforcement efforts, in addition to the benefits it provides directly to citizens. It seems clear that privatization should be encouraged and supported rather than limited. Gun control laws are likely to have precisely the opposite impact on crime rates to that which control advocates claim.

III. Conclusions—How Much Privatization?

With all the growth in privatization, the argument that guns are being bought for protection seems to be very reasonable. One problem with the arguments for (and some of them against) gun control is that they focus only on the gun-crime relationship and ignore a lot of related phenomena that are also occurring.[92] Rising gun ownership is just one part of a large trend toward greater private-sector involvement in crime prevention, detection, and protection, a trend that is taking place because of the growing fear of crime. (Of course, increasing crime rates, which are at least partly a result of government failure, generate still greater fears.)

With all the benefits from privatization, one might ask how much privatization should be allowed. There certainly are conflicting views as to the answer to this

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question. Consider, for example, the study by Marshall Clinnard, which contrasted crime rates in Switzerland and Sweden and attempted to explain observed differences in crime rates by noting differences in the social and political makeup of the two countries.[93] First note that crime rates and especially violent crime rates are much higher in Sweden. It is also interesting to note that most Swiss households have a gun because about two-thirds of all males are part of the militia from age 20 to 50 or 55, and they keep their weapons at home. Thus, a lack of firearm availability cannot be the explanation for low crime (and especially violent crime) rates in Switzerland. Clinnard's explanation for the low crime rate in Switzerland relative to Sweden stressed the different degrees of government control. He observed that Sweden has a strong central government that has tended to inhibit individual initiative and responsibility in all areas, including crime control. The Swiss have relied much more on individual efforts with a much weaker central government. In fact, private sector provision of police services is rather common in Switzerland, with more than thirty Swiss villages and townships currently purchasing protection at what the Swiss Association of Towns and Townships describes as "substantial savings."[94] This led Clinnard to conclude that

> Communities or cities that wish to prevent crime should encourage greater political decentralization by developing small government units and encouraging citizen responsibility for obedience to the law and crime control. The increased delegation and responsibility for crime control to the police and to governmental agencies . . . should be reversed.[95]

So Clinnard's findings clearly support even greater privatization.

These conclusions are in sharp contrast to the claims made by others, including Raymond Kessler. He contended that the "basic sources of crime" are "rooted in the political economy of capitalism."[96] However, crime in socialized countries is a significant problem, so it is difficult to justify Kessler's claim that crime is "rooted in the political economy of capitalism." One Soviet writer on crime, for example, reported an "almost continuous growth of alcoholism and crime," and that far from "being eliminated, bribery and corruption increased, particularly in the work of many economic and trade organizations, in institutions of higher learning, in various state organizations and enterprises, and even within the party."[97] Another author wrote of "the spreading epidemic of senseless, brutal hooliganism and crime."[98] Crime statistics from Russia are typically unreported or unreliable, but Peter Juviler compared conviction rates in the United States and the USSR for 1971 and concluded that "if actual crime rates followed anywhere near these conviction rates then . . . one would be safer from violent crimes in the United States."[99] In fact, it is interesting to note that Soviet citizens are adopting private sector protection techniques because of fear of crime. Juviler cites several Soviet writers in reporting that

> it is not uncommon for people living in an apartment house to have keys to the elevator, equip apartment doors with peepholes and double locks, chip

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> in for someone to run the elevator and lock and guard the door by 1:00 A.M. Soviet car owners remove windshields from their machines except when driving in the rain. They keep kids off the streets as much as possible. . . . Gates on many a high garden fence carry a sign, ZLAYA SOBAKA (Beware of the Dog). Some homeowners go to the extent of sleeping outdoors with shotguns or stringing up electrical fences when fruit and vegetables are temptingly ripe. . . . Residents in factory barracks and distant collective villages become accustomed to thieving, violence, and drunkenness among the young and not so young, and try to protect themselves accordingly.[100]

Since Russia has suppressed private market (capitalist) activity significantly, replacing it with government, and crime remains a significant and growing problem, it seems unlikely that capitalism can be blamed for crime. Thus, the argument for greater privatization seems to be the strongest. However, we still do not have an answer to the question of how much more privatization should be allowed (or even encouraged).

A growing number of scholars advocate complete privatization.[101] That is, they contend that government should have no role whatever in the crime protection area. Their argument is an appealing one. It stresses the advantages of freedom of choice and competition, the cost-minimizing incentives of profit seekers, and the benefits of specialization. (Much of the argument is briefly summarized in the preceding section of this paper.) This point of view stresses the efficiency and effectiveness of supply by private producers *relative* to supply by public producers. However, some would contend that it tends to overlook certain problems that may emanate from the demand side of the market.

Private sector production of protection generates external benefits for which private suppliers may be unable to charge. For example, suppose a few individuals hire a private security firm to patrol their neighborhood. This patrol deters criminals, both for the individuals paying the firm and the individuals in the neighborhood who do not pay. Thus, there are strong free-rider incentives associated with many private sector protection efforts. If everyone paid for the benefits received, the firm would patrol more often and prevent more crime, but since individuals can reap benefits without paying, they have strong incentives not to enter into the neighborhood group that hired the security firm.

The free rider problem arises to one degree or another with the production of many private sector protection attempts. Neighborhood watches face considerable free-rider problems, for example, as individuals refuse to participate, or drop out, but still receive benefits. There are even spillover benefits associated with individual purchases of firearms for protection. Suppose that an area of small retail shops is plagued by robberies, for example, and some of the store owners decide to purchase firearms for protection. Further, assume that in the course of a few weeks robberies are attempted at two or three of the stores whose owners have guns, and that the guns are used in an effort (whether successful or not) to prevent the robbery. Potential criminals realize that a number of shopowners

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in this retailing area have guns and are willing to use them. Rather than take a chance of running into one of these store owners, criminals may choose to concentrate their efforts in another area. Thus, all the store owners in the area are better off, including those who chose not to buy a gun. Still, if more store owners owned guns for protection, rather than free riding off those who do, more crime would be deterred. The free rider problem actually means that *too little* private sector protection is purchased and produced. Therefore, it *does not* justify suppressing private sector protection efforts further, as gun control would do. Instead, efforts to encourage more privatization are appropriate. More guns for protection are needed, rather than less.

Furthermore, in contrast to what many people claim, the free rider problem *does not justify government production.* The problem arises because individuals cannot be persuaded to cooperate in buying the good or service in question, not because the private sector would not produce it if producers were fully compensated for the benefits they provide. For example, it was argued earlier that the private sector will concentrate resources in the areas of greatest perceived threat, so such resources will be deployed against potential violent and property crimes. One function of police is to enforce traffic laws. Under the existing system of rights and liabilities, it is doubtful that anyone would voluntarily contribute to the purchase of the services of a private firm to enforce traffic laws. Yet there are obviously tremendous benefits generated by a traffic system in which people must obey at least a minimum level of rules or be punished. This would generate classic free-rider problems if traffic control were left completely to the private sector. However, it does not mean that government must enforce the traffic laws. It simply means that given current rights and liabilities, people will have to be *coerced into paying* for this service since they cannot be persuaded to cooperate. Government is the only entity that is widely recognized to have the power to coerce. Thus, government involvement may be required to collect taxes and pay for enforcement of traffic laws. Once a private firm is appropriately paid, it will provide the service, and in all probability do it at a lower cost than the public police. For example, during the mid-1960s, Kalamazoo, Michigan, contracted with a private company to patrol its streets and enforce traffic laws.[102] The process worked well until it was declared illegal. Wooldridge reported that "the judge who administered the *coup de grace* was offended that anyone should make a profit out of law enforcement, and apparently did not consider it relevant that a profit making company might do the job more cheaply than a non-profit-making sheriff."[103]

This is an important point. Even *if* total privatization would lead to too little protection because of the free rider problem, there are considerable benefits to be gained from higher levels of private production. Communities should have the right to contract with private police firms if the firms can offer services that are adequate in the mind of the taxpayers and produced more efficiently than

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by the public police. This would not necessarily eliminate all public police, of course, but it should force them to compete for the right to supply the service and therefore to become considerably more cost-effective.

The potential for purchase of protection from the private sector should eliminate or substantially reduce one source of government failure-bureaucratic inefficiency. However, government expenditures and therefore the output of either public or private sector police, will still reflect the demands of special interest groups. In order to completely overcome the problems arising from government failure, government must be eliminated from both the demand and supply side of the market. The free rider problem may prevent this. Of course, in this case the question is not one of market failure alone. The question becomes, Are the inefficiencies associated with underallocation due to the free rider problem in a purely private sector market for protection greater than or less than the inefficiencies associated with interest-group-induced misallocations arising from governmentally purchased protection?

It should be stressed that the free rider problem arises because of the existing systems of rights and liabilities. Externalities exist when property rights are unclearly or incompletely defined (or when they are communally assigned). Thus, with an appropriate and clearly delineated structure of rights and liabilities, the free rider problem could conceivably be overcome so private sector protection systems could provide the optimal amount of protection. For example, Anderson and Hill examined several private cooperative organizations that established private protection and enforcement systems in the western part of the United States during the period between 1830 and 1880, including land clubs, cattlemen's associations, and both wagon train and mining camp justice systems.[104] In order to internalize the benefits of each system, and thereby minimize costs and generate a sufficient level of protection, these organizations' justice applied to anyone within the community. In effect, entry into the community (e.g. wagon train, mining camp, etc.) required cooperation in the establishment of law enforcement and protection against crime. Anderson and Hill found the perception many of us have of the West as a wild society to be incorrect. Instead, private agencies saw to it that persons and property were protected and order prevailed. In the West, "competition rather than coercion insured justice," and many "voluntary, extralegal associations provided protection and justice without apparent violence and developed rules consistent with the preferences, goals, and endowments of the participants."[105]

Thus, the advocates of complete privatization may be right in their contentions, *if* appropriate property rights structures can be instituted. They may be right anyway, if the misallocation of governmentally controlled production is more significant than the underallocation that might arise with complete privatization. In any case, the benefits from increasing privatization, including greater gun

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ownership for protection, can be substantial. Privatization of protection should be encouraged rather than discouraged through restrictions like gun controls.

So it seems that Archie Bunker was right, at least in part. The government has failed to control crime adequately. Furthermore, guns in the hands of private citizens may indeed be a deterrent to crime. However, increased government involvement that simply takes another form (i.e., gun control) does not appear to be the appropriate solution. Instead, increased private-sector production of protection should move us toward an efficient solution to the crime problem, and this private sector protection effort may involve considerable gun ownership.

NOTES

1. See also, for example, A. L. Stinchcombe et al., *Crime and Punishment—Changing Attitudes in America* (San Francisco: Jossey-Bass, 1980), pp. 16–22, for a discussion of rising crime rates.
2. Samuel Walker, "Reexamining the President's Crime Commission," *Crime and Delinquence* 24 (January 1978):2.
3. Michael Milakovich and Kurt Weis, "Politics and Measures of Success in the War on Crime," *Crime and Delinquency* 21 (January 1975):1.
4. Yankelovich, Skely and White, Inc., *The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders* (Williamsburg, Va.: National Center for State Courts, 1978), Table III.6, p. 25 and Table IV.1, p. 29.
5. Stinchcombe et al., *Crime and Punishment,* p. 31.
6. The private sector has actually responded in a number of ways in addition to increasing gun ownership for protection. Other private sector responses are examined in part III of this paper.
7. Joe Feagin, "Public Reaction to Crime in the Streets," *American Behavioral Scientist* 13(1970):797–814.
8. Albert Reiss and David Bordua, "Environment and Organization: A Perspective on the Police," in David Bordua, ed., *The Police: Six Sociological Essays* (New York: Wiley, 1967).
9. Alan Lizotte and David Bordua, "Firearms Ownership for Sport and Protection: Two Divergent Models," *American Sociological Review* 45 (April 1980):239.
10. Alan Lizotte, David Bordua, and Carolyn White, "Firearms Ownership for Sport and Protection: Two Not So Divergent Models," *American Sociological Review* 46(August 1981):499–503.
11. In addition to the above cited evidence, see the excellent paper by Gary Kleck, "The Relationship Between Gun Ownership Levels and Rates of Violent Crime in the United States," in Don B. Kates, Jr., ed., *Firearms and Violence* (Cambridge, Mass.: Ballinger Press, 1984) for a survey of other empirical support for the contention that violent crime leads to greater gun ownership, as well as additional evidence generated in Kleck's paper and in Joseph P. Maggidino and Marshall H. Medoff, "An Empirical Analysis of Federal and State Firearm Control Laws," in the same volume.
12. Kates, "Handgun Banning in Light of the Prohibition Experience," in *Firearms and Violence,* note 11.
13. Magaddino and Medoff, "An Empirical Analysis of Federal and State Firearm Control Laws," and Kleck, "The Relationship Between Gun Ownership Levels and Rates of Violent Crime in the United States," both in *Firearms and Violence,* note 11.
14. Gary Becker, "Crime and Punishment: An Economic Analysis," *Journal of Political Economy* 78(March/April 1968):526–36.
15. Evidence of these claims is not presented here because of space constraints. However, for summaries of the relevant literature see the following literature surveys: Nicholas Elliot, "Economic Analysis of Crime and the Criminal Justice System," in John Gardiner, ed., *Public Law and Public Policy,* (New York: Praeger, 1977), pp. 68–89; J. M. Heineke, "Economic Models of Criminal Behavior: An Overview," in J. M. Heineke, ed., *Economic Models of Criminal Behavior* (Amsterdam: North Holland, 1978), pp. 1–34; Jan Palmer, "Economic

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Analyses of the Deterrent Effect of Punishment: A Review," *Journal of Research in Crime and Delinquency* 12 (January 1977):4–21; John Taylor, "Econometric Models of Criminal Behavior: A Review," in J. M. Heineke, ed., *Economic Models of Criminal Behavior* (Amsterdam: North Holland, 1978), pp. 35–82; and Sharon Long and Ann Witte, "Current Economic Trends: Implications for Crime and Criminal Justice," in Kevin Wright, ed., *Crime and Criminal Justice in a Declining Economy* ed. (Cambridge, Mass.: Oelgeschlager, Gunn and Hain, 1981); pp. 69–143.

16. U.S. Department of Justice, *Uniform Crime Reports*, Federal Bureau of Investigation, 1961 and 1981. It is interesting to note, in this context, that the two countries most often cited by gun control advocates as having effectively held violent crime rates down through gun controls are Japan and Great Britain. However, these two countries solve 81 and 90 percent of their violent crimes respectively, as compared to our 45 percent (David Hardy, "Gun Control: Arm Yourself With Evidence," *Reason* 14 (November, 1982):39). The economic theory of regulation would predict relatively low crime rates with such high probabilities of being caught, regardless of what the gun laws might be.
17. David Jones, *Crime Without Punishment* (Lexington, Mass.: Lexington Books, 1979), p. 83.
18. Ibid., pp. 73–75.
19. U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics*, Bureau of Justice Statistics, 1976.
20. It must be stressed that the only purpose of the above discussion of the economic theory of crime was to offer an explanation of the rising crime rates that does not include the availability of firearms. The above discussion should not be interpreted as advocacy of more severe criminal sanctions or an expansion of the public sector's law enforcement bureaucracy in order to increase the probability of punishment (in fact, the opposite will be argued later). After all, as Ehrlich noted, "the results of the empirical investigation indicate that the rate of murder and other related crimes may also be reduced through increased employment and earning opportunities. The range of effective methods for defense against murder thus extends beyond conventional means of law enforcement and crime prevention" (I. Ehrlich, "The Deterrent Effect of Capital Punishment: A Question of Life and Death," *American Economic Review* 65 (June 1975):416–17). Some would make the normative judgment that the evidence of the deterrent effect of punishment and lack of the evidence supporting a crime reducing impact of rehabilitation efforts justifies more severe punishment, but we shall not.
21. Roscoe Pound and Felix Frankfurter, eds., *Criminal Justice in Cleveland* (Cleveland: The Cleveland Foundation, 1922), p. 590.
22. Special interest theories of government in general and criminal justice in particular come from such diverse sources as the libertarian right (see, for example, Robert McCormick and Robert Tollison, *Politicians, Legislation, and the Economy, An Inquiry into the Interest Group Theory of Government* [Boston: Martinus Nijhoff Publishing, 1981], and Bruce Benson, "Land Use Regulation: A Supply and Demand Analysis of Changing Property Rights," *Journal of Libertarian Studies* 5 [Fall 1981]:435–51; Ralph Nader–type muckrakers (for example, Ralph Nader, "Introduction" in Bruce Wasserstein and Mark Green, eds., *With Justice for Some: An Indictment of the Law by Young Advocates* [Boston: Beacon Press, 1970], p. ix); the liberal left concerned with government treatment of the poor and minorities (see, for example, Charles Reasons and Jack Kuykendall, eds., *Race, Crime, and Justice* [Pacific Palisades, Calif.: Goodyear Publishing, 1972], pp. 1–2, and Melvin Sikes, *The Administration of Injustice* [New York: Harper and Row, 1975], p. 119); and the radical or Marxian left (see, for example, Richard Quinney, *Crime and Justice in Society* [Boston: Little, Brown, 1969]). In addition, as Eisenstein observed, this special interest view is very compatible with the "legal realist" view of law (James Eisenstein, *Politics and the Legal Process* [New York: Harper and Row, 1973], pp. 9–10).
23. See the references cited in note 22, as well as Richard Posner, "Theories of Economic Regulation," *Bell Journal of Economics and Management Science* 5 (Autumn 1974):335–58; George Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2(Spring 1971):3–21; Sam Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics* 19(August 1976):211–40; and Bruce Benson,

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"Regulation—The Demand and Supply of Property Rights," *Appalachian Business Review* 8(1981):22–28, whence the predictions listed below are derived.

24. See, for example, Richard Quinney, *The Social Reality of Crime* (Boston: Little, Brown, 1970); William Chambliss and Robert Seidman, *Law, Order, and Power* (Reading, Mass.: Addison-Wesley Publishing, 1971); Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems* 12(Summer 1964):69; Pamela Roby, "Politics and Criminal Law: Revision of the New York State Penal Law on Prostitution," *Social Problems* 17(Summer 1969):83–109; and others.
25. Raymond Nimmer, *The Nature of System Change: Reform Impact on the Criminal Court* (Chicago: American Bar Foundation, 1978).
26. National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police*, (Washington, D.C.: Government Printing Office, 1973), p. 206. See also Fred Graham, *The Self-Inflicted Wound* (New York: Macmillan, 1970).
27. Jones, *Crime Without Punishment*, note 17, p. 83. See citations in note 15 for evidence of higher crime rates resulting from reduced probability of punishment.
28. Hugo Bedau, *The Courts, the Constitution and Capital Punishment* (Lexington, Mass.: Lexington Books, 1977), p. 76.
29. Ehrlich, "The Deterrent Effect of Capital Punishment: A Question of Life and Death," note 20.
30. H. Erskine, "The Polls: Capital Punishment," *Public Opinion Quarterly* 34(1970):290–301, and Public Opinion About Capital Punishment, *Gallup Opinion Index* (1978), pp. 20–25.
31. Richard Berk, Harold Brackman, and Selma Lesser, *A Measure of Justice: An Empirical Study of Changes in the California Penal Code, 1955–1971* (New York: Academic Press, 1977).
32. Ibid., pp. 85–86.
33. Ibid., p. 11. In addition, see John Heinz, Robert Gettleman, and Morris Seeskin, "Legislative Politics and the Criminal Law," *Northwestern University Law Review* 64(July 1969):277–356, where it was also found that criminal justice legislation involved an agreed-bill process in which major lobbies negotiated along with a few legislators.
34. Berk, Brackman, and Lesser, *A Measure of Justice*, note 31, p. 276.
35. Ibid., p. 299.
36. George Cole, *Politics and the Administration of Justice* (Beverly Hills, Calif.: Sage, 1973), pp. 23–24.
37. Staff Report to the National Commission on the Causes and Prevention of Violence, *Law and Order Reconsidered* (New York: Bantam Books, 1970), pp. 551–70.
38. Abraham Goldstein and Joseph Goldstein, *Crime, Law, and Society* (New York: Free Press, 1971), p. 293. See also Abraham Blumberg, *Criminal Justice* (Chicago: Quadrangle, 1967); Norval Morris and Gordon Hawkins, "The Overreach of the Criminal Law," *Midway* 9(Winter 1969); Harry Jones, eds., *The Courts, the Police and the Law Explosion* (Englewood Cliffs, N.J.: Prentice-Hall, 1965); Sanford Kadish, "The Crisis of Overcriminalization," *Annals of the American Academy of Political and Social Science* 374(November 1967):157–70; and Herbert Packer, *The Limits of the Criminal Sanction* (Stanford: Stanford University Press, 1968).
39. For theoretical derivation of such predictions, see William Niskanen, *Bureaucracy and Representative Governments* (Chicago: Aldine-Atherton, 1971); Niskanen, "Bureaucrats and Politicians," *Journal of Law and Economics* 18(December 1975):617–43; Niskanen, "The Peculiar Economics of Bureaucracy," *American Economic Review* 58(May 1968):293–305; and Benson and M. L. Greenhut, "Interest Groups, Bureaucrats and Antitrust," Ronald E. Grieson, ed. Antitrust and Regulation (Lexington, Mass.: Lexington Books, 1986), pp. 53–90.
40. Berk, Brockman, and Lesser, *A Measure of Justice*, note 31, pp. 276 and 282.
41. Jones, *Crime Without Punishment*, note 17, p. 201.
42. Blumberg, *Criminal Justice*, note 38, pp. 184–85.
43. Eisenstein, *Politics and the Legal Process*, note 22, p. 112.
44. Jones, *Crime Without Punishment*, note 17, pp. 191–97.
45. Alan Bent, *The Politics of Law Enforcement: Conflict and Power in Urban Communities* (Lexington, Mass.: Lexington Books, 1974), pp. 6–11.
46. Eisenstein, *Politics and the Legal Process*, note 22, p. 120.
47. Benson, "A Note on Corruption of Public Officials: The Black Market for Property Rights," *Journal of Libertarian Studies* 5(Summer 1981):305–11.

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48. Bent, *The Politics of Law Enforcement,* note 45, pp. 3-6.
49. Lawrence Sherman, "Watching and Crime Prevention: New Directions for Police," *Journal of Contemporary Studies* 88(Fall 1982):87.
50. Christopher Dobson and Ronald Payne, "Private Enterprise Takes On Terroism," *Across the Board,* (January 1983):36.
51. Robert Hair, "Private Security and Police Relations," in John O'Brien and Marvin Marous, eds., *Crime and Justice in America: Critical Issues for the Future* (New York: Pergamon Press, 1979), pp. 113-14.
52. Dobson and Payne, "Private Enterprise Takes On Terrorism," note 50, p. 36.
53. In addition, some local governments have opted to purchase police services from private firms rather than produce such services themselves. This phenomenon is discussed later.
54. Kleck, "The Relationship Between Gun Ownership Levels and Rates of Violence in the U.S.," note 11; and Lizotte, Bordua, and White, "Firearm Ownership for Sport and Protection," note 10.
55. Dobson and Payne, "Private Enterprise Takes On Terrorism," note 50, p. 36.
56. Ibid., pp. 34-41.
57. Sherman, "Watching and Crime Prevention," note 49, p. 37.
58. Norman Rushforth, et al., "Violent Death in a Metropolitan County," *New England Journal of Medicine* 297(September 1977):537.
59. Blumberg, *Criminal Justice,* note 38, p. 185.
60. William Wooldridge, *Uncle Sam, The Monopoly Man* (New Rochelle, N.Y.: Arlington House, 1970), p. 116.
61. Ibid., p. 117.
62. Ibid., p. 121.
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"Oh, Ye Are For Anarchy!": Consent Theory in the Radical Libertarian Tradition

by Carl Watner

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The twentieth century libertarian movement has experienced an ongoing debate between the minarchists, the advocates of "limited" government, and the anarchists, who argue that the ultimate implications of libertarian principles are "no" government. Few of the parties to these arguments realize that they are participating in a discussion whose roots can be traced back well over three centuries. Nor do they realize how the argument has shifted over time. In the beginning, those who defended existing governments argued for state absolutism and the divine right of kings. Their opponents argued that no persons could be bound in a political sense except by their own consent. The argument that the "ruled" had individual rights meant that the monarch ought not to violate those rights. In response, the divine-rightists or patriarchialists, as they became known, urged that such a "limited" government or "mixed monarchy," as they called it, was a contradiction in terms. These critics offered "no"-government-anarchy as the *reductio ad absurdum* of individual rights and government by consent. As Oliver Cromwell so aptly put it, at the time of the Putney Debates in 1647: "The consequences of this rule tends to anarchy, must end in anarchy."[1]

In the English-speaking part of the world, the "limited" government versus anarchy controversy has evolved in at least three stages. The first stage was the critique by such people as Sir Robert Filmer (and later the opponents of the Levellers, as we have noted above) and others that government by consent led straight to anarchy. In this phase of the discussion, there were as yet no defenders of anarchy—only defenders of limited government and their opponents, the patriarchalists. The second stage of the controversy witnessed both the moral and practical triumph of the libertarian ideal (especially after the success of the Glorious Revolution of 1688 and the American Revolution in 1783) that each person is unique

Author's Note: I would like to thank George Smith for originally pointing out many of the historical connections to be made in the intellectual history of the consent doctrine, especially for his references to Filmer and Tucker.

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and possesses proprietorial rights over him- or herself. Only the most dyed-in-the wool statist could continue to argue after those victories that no one should have any say in the political matters affecting him- or herself. Whereas the absolutists had argued that the people had no rights, eventually it became commonplace to recognize that they did have rights, even if their "life, liberty, and property" could be entrenched upon in certain situations. Although as late as the 1780s the ideal of government by consent seems to have won the day, it would still be difficult to find any proponents of the social ideal of anarchy.

Finally, after nearly a century and a half of discourse, there arose a group of radical thinkers who were brave enough actually to brandish the *reductio ad absurdum* of anarchy. This constituted the third phase of the limited- versus no-government controversy. People like William Godwin were prepared to accept the logical implications of their beginning premises, namely, that no outside coercive authority had any jurisdiction over the nonconsenting individual and that each person should be left totally free of coercive molestation. Godwin and the individualist-anarchist movement he spawned realized that "to contend that consent is the moral justification for government is to lay the groundwork for anarchy."[2] Subsequent thinkers explained the various moral and practical ramifications of anarchy, but the point had finally been reached where anarchism was set against any and all forms of government. Unknowingly or not, latter-day anarchists repeated many of the arguments originated by Sir Robert Filmer to explain why no government could ever be "limited." Many political theorists were caught on the horns of this dilemma. On the one hand, they believed in government by consent and in individual rights, but on the other, they were not prepared to accept the anarchist implications raised by either Filmer or Godwin. In order to try to salvage their own position, thinkers like John Locke developed and relied upon the doctrine of "tacit" consent to prove that existing governments did in fact rest on some sort of consent. "Tacit" consent meant that one accepted the government one lived under simply because one continued to live in the geographic area over which it maintained jurisdiction. Owning property according to governmental law and using government services of one sort or another indicated one's support. "To trace the history of the tacit consent doctrine is to trace" the "tortuous route whereby political theorists . . . attempted to void the anarchistic implications" of their consent doctrines.[3]

The basic issues in the anarchy versus limited-government debate are the same now as they were over 300 years ago. The only difference is that radical libertarianism has advanced to the point where the *reductio* argument is no longer that but is a position it willingly accepts and defends. If consent is to mean anything, it must mean the explicit voluntary consent of each and every person over whom government exercises control. Since no government can document that it rests on individual consent and since payment of taxes is not voluntary, no government can demonstrate that it has the consent of the governed (otherwise the

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imposition of physical force, and the threat of physical force, to collect taxes would not be necessary). Three hundred years ago this was a novel argument used by the defenders of kings to discredit their limited-government opponents, but it is now a perfectly valid argument used by the no-government defenders of anarchy. This, then, is one of the purposes of this paper: to show how the early critics of consent theory argued that such ideas inevitably led to anarchism. Other purposes of this paper are to (1) describe the historical development of consent theory in general, and (2) demonstrate how this theory has become part and parcel of the radical libertarian tradition.

Probably the earliest glimmerings of consent theory in English history are found in *A Shorte Treatise of Politike Power,* written by John Ponet in 1556. Ponet (1516?–1556) was a Cambridge scholar who eventually became an English bishop and then, with the accession of Queen Mary to the throne in 1553, went into exile. His treatise was concerned with "the true obedience which subjects owe to their kings and other civil governors" and propounded a series of political questions: "whether kings, princes, and other governors have an absolute power and authority over their subjects," "whether kings, princes and other politic governors be subject to God's laws, and the positive laws of their countries," "in and what things, and how far subjects are bound to obey their princes and governors," "whether all the subjects' goods be the kaisers and kings own, and that they may lawfully take as their own," and finally "whether it be lawful to depose an evil governor, and kill a tyrant."[4]

Ponet's answers, although couched in a radical Protestant religious posture, nonetheless form the basis for a nonsecular, natural rights approach. Quentin Skinner, a twentieth century historian of this era, refers to their "anarchic implications": "With citations from both the civil and canon laws, Ponet argues that the crimes of a ruler who exceeds the bounds of his office are in fact no different—and ought to be treated no differently—from the same crimes when committed by ordinary citizens. 'If a prince rob and spoil his subjects, it is theft, and as a theft ought to be punished.' And 'if he kill and murder them contrary or without the laws of his country, it is murder, and as a murderer he ought to be punished.' 'And those that be judges in commonwealths, ought (upon complaint) to summon and cite them to answer to their crimes, and so to proceed, as they do with others.'"[5]

Ponet's biographer, Winthrop S. Hudson, notes that his "writer becomes somewhat emotional as he thinks of those 'evil princes' who 'claim all their subjects goods for their own.' . . . To them he cites the example of Naboth refusing to sell his vineyard to the king, affirming that he rightly 'refused to sell it, as he might do, for by God's law he had a property therein, from which without his will and consent, he could not be forced to depart.'"[6]

The idea of consent played a prominent part in Ponet's thinking. His view of natural law led to a restriction on the power of kings and governors, who derived

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their authority from the people. "Neither pope, Emperor, nor king may do any thing to the 'hurt' of his people without their consent," nor may any king or prince break or dispense with the positive laws "but with the consent of the people."[7] The institution of government and its magisterial offices are in the nature of a trust, which ultimately rests upon the consent of the governed.

> Is any man so unreasonable to deny, that the whole may do as much as they have permitted one member to do? Or those that have appointed an office upon trust, have not authority upon just occasion (as the abuse of it) to take away that they gave? All laws do agree that men may revoke their proxies and letters of Attorney, when it pleaseth them: much more when they see their proctors and attornies abuse it.[8]

It was not understood until the heyday of Lysander Spooner some 300 years later that this view of civil authority as "merely a delegation of power which might be revoked when it was abused" might be used to destroy the very concept of political representation.[9] It was certainly used by Ponet and other sixteenth century thinkers to justify tyrannicide.[10] "To affirm, as Ponet does, that a private man may kill a magistrate is, to be sure, nothing less than the rankest anarchy."[11] Ponet made the people (and by the people, Ponet included the poor) custodians of natural and divine law with the power to enforce it, by means of establishing that form of government they thought most conducive to their interests. When their governors and kings violated their trust, then they forfeited their power, whether they relinquished their positions voluntarily or whether they had to be removed forcefully.

Although Ponet was not an oft-quoted theorist during the century following his death, his *Shorte Treatise* was republished twice during the Puritan era. "By virtue of these two editions of 1639 and 1642, it is evident that Ponet was still a living source of ideas in the seventeenth century."[12] His authorship of the tract was not well known, and in fact it was not until after the American Revolution that Ponet actually received the recognition due him. "By that time a charge of rebellion made little difference, and so John Adams felt no hesitation in quoting from the 1556 edition and declaring that it "contains all the essentials of liberty which were afterwards dilated on by Sidney and Locke."[13]

Although there is no evidence that Ponet used the word "anarchy" or any of its derivatives, there is proof that the term was used to identify the "absence of government" and "a state of lawlessness" or "political disorder" by other sixteenth and seventeenth century writers. The term itself may have been derived from the medieval Latin *anarchia* and the French *anarchie,* which were cited by Randle Cotgrave's *A Dictionary of the French and English Tongues,* published in 1611. The earliest entry for the use of the word "anarchy" in *The Oxford English Dictionary* is from the 1552 edition of Richard Taverner's *Proverbs or Adages with New Additions, Gathered out of the Chiliades of Erasmus,* originally published in 1539: "This unlawful liberty or licence of the multitude is called

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an Anarchy.''[14] By the 1640s in England it was common to find the word ''anarchy'' being used quite seriously. In a tract entitled *The Resolving of Conscience* (1642), attacking the social contract theory of government, Henry Ferne wrote that if the doctrine of the original power of the people ''must be a Fundamentall'' then ''it is such a one as upon it this Government cannot be built, but confusion and anarchy may be readily raised.''[15] Clement Walker in his *Anarchia Anglicana, or the History of Independency, The Second Part* (1649) referred to those ''who under colour of merchandise vent antimonarchical and anarchical tenets.''[16]

The term ''anarchy'' was apparently not confined to the political sphere for there was an early realization of the connection between religious freedom and liberty of conscience and political freedom. ''Preaching before the House of Commons on 26th May 1647, Thomas Case denounced liberty of conscience as opening the floodgates of anarchy.'' In his sermon, ''Spiritual Whoredom Discovered,'' Case said that if you publish liberty of conscience as one of the people's rights then

> see . . . how long your civil peace will secure you when religion is destroyed. . . . For no doubt if this once be granted them . . . they may in good time come to know also—there be them that are instructing them even in these principles, too—that it is their birthright to be freed from the power of parliaments and . . . kings. . . . Liberty of conscience (falsely so called) may in time improve itself into liberty of estates and . . . houses and . . . wives, and in a word liberty of perdition of souls and bodies.[17]

This ''anarchy of religious freedom'' was noted by other contemporary writers. Henry Parker in 1644 in his *Liberty of Conscience: Or the Sole Means to Obtain Peace and Truth* noted that liberty for men to teach what they will, will result in many false doctrines and teachers. ''Yet it were better that many false doctrines were published . . . then that one sound truth should be forcibly smothered or willfully concealed.'' This ''complying with weak consciences or the tolerating of several opinions'', as Parker termed it, was not any ''sort of Libertinism,'' for it was the only means of arriving at truth.[18]

This was one of the main themes of the English radicals of the mid-seventeenth century: that liberty of conscience was one of the natural rights of man. There was nothing that the Levellers ''held with more tenacity than liberty of conscience.''[19] Case was right in pointing out the anarchic implications of this doctrine, for the supporters of liberty of conscience realized that it was impossible to assert one's right of private judgment without upholding the same right for everyone else. In the religious sphere this meant that guaranteeing the liberty of the regenerate necessitated guaranteeing the liberty of all. This was one of the main conributions of Puritanism to the doctrine of general liberty.[20] These radicals also observed a direct connection between their churches and the civil state. Their entire doctrine of Christian liberty insisted upon the importance of

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consent as opposed to conformity and called into question the end or reason of their social organizations. Richard Overton, for example, in *An Arrow Against All Tyrants,* written in 1646, noted:

> For by natural birth all men are equal, . . . born to like propriety, liberty and freedom, and as we were delivered of God by the hand of nature into this world, every one with a natural innate freedom and propriety, . . . even so we are to live, every one equally . . . to enjoy his birthright and privilege, even all whereof God by nature hath made him free. . . . Every man by nature being a king, priest, prophet, in his own natural circuit and compass, whereof no second may partake but by deputation, commission, and free consent from him whose right and freedom it is.[21]

During the late sixteenth and seventeenth centuries, many radical religious sects employed the device of a church covenant. This was sometimes an implicit, but usually an explicit congregational agreement by which those voluntarily enrolling in a particular church pledged themselves to the faith. Familiarity with the idea of church covenant and with the principles it embodied "helped establish in the civil sphere the doctrine of the social contract and government by consent."[22] The church in this view was a voluntary association of equals and undoubtedly furnished a model for the civil state. The church preserved the free form of community and enabled (or at least aided) it to influence by analogy the theory of the state. The Levellers brought to their conception of the state, their views about church organization. "If the Leveller emphasizes the contract on which the authority of just government depends and insists on the principle of consent, he has had in his church, experiences of a community organized on these very principles."[23]

It was only a small step for the Levellers to conclude that if the voluntary church was the only true church, then the only true political organization was the voluntary state. They moved quite close to a voluntaryist conception of the church, and a Leveller petition of March 1647 went so far as to urge "that tithes and all other enforced maintainences may be for ever abolished, and nothing in place thereof imposed, but that ministers may be paid only by those who voluntarily choose them, and contract with them for their labours."[24] By substituting "taxes" for "tithes" and "government officials" for "ministers," we can see how close these early religious dissenters were to espousing a truly voluntary state. Latter-day thinkers were left to question: If men's spiritual health could be left to the free reign of voluntary forces, why could not men's physical well-being be left to the free market? Clearly these early advocates of church-state segregation were in the vanguard of the libertarian tradition because they took one of the first steps necessary to separate the state from the rest of society. They did this by declaring themselves four-square for liberty of conscience and religious freedom, and government by consent.[25]

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The Levellers, by the principles of their religious thinking, were "thrown back wholly on the law of nature in the civil sphere."[26] They admitted no sovereignty anywhere except in the individual and "seriously accepted the possibility of any man refusing obedience to commands imcompatible with his ideas of reason or justice. This may appear anarchic, but to them it was the ultimate guarantee of liberty."[27] The Leveller leaders, such as John Lilburne and Richard Overton, saw the Engish nation as having been reduced to the original law of nature as a result of the tyranny of Charles I and the usurpations of Oliver Cromwell. They proposed that a new political settlement be made in which all Englishmen would give their consent to the Agreement of the People. The Agreement was a written document, the forerunner of written "constitutions," which was to be superior to Parliament. The Levellers hoped that it would be unanimously accepted by members of the army and then be signed by the people at large at the first general election. It plainly illustrates the Levellers' premise that society could be constituted on an entirely voluntary basis.[28]

The Putney Debates, which took place October 28–November 1, 1647, placed the Levellers against Cromwell, Ireton (his son-in-law and chief spokesman), and the other army grandes. The debates illustrate the radical nature of Leveller thought and their reliance on both consent and state-of-nature theory. Ireton declared that the Levellers could ground their demand for manhood suffrage only on some plea of natural rights as opposed to the historic rights held forth by the supporters of the fundamental English state. They did not deny the fact. When Ireton claimed that the Levellers would destroy all property, they confidently appealed to the law of nature to demonstrate that the right to property is guaranteed by the law of nature, and not, as Ireton maintained, merely by positive government laws. Clarke, one of the Leveller debaters, argued that the law of nature is the basis of all constitutions.

> yet really properties are the foundation of constitutions, and not constitutions of property. For if so be there were no constitutions, yet the Law of Nature does give a principle for every man to have a property of what he has, or may have, which is not another man's. This natural right to property is the ground of 'meum' and 'tuum'[29]

Furthermore it is the law of nature that teaches the individual his rights and attendant duties: the right and duty of self-preservation, the natural limits of obedience, and the right and duty of resistance to tyrannical rulers. It teaches him what are the ends of government; and it inculcates the basic principles of social life—the principles of natural justice and equity that dictate the political equality of all men within the state and that are also based upon the biblical maxim "to do unto others as you would have them do unto you."[30]

The reliance of the Leveller debaters on a theory of government by consent is quite explicit at some places. In a classic and oft-cited statement Rainborough

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affirmed his belief that "the poorest he that is in England hath a life to live, as the greatest he; and therefore truly, sir, I think it's clear, that every man that is to live under a government ought first by his own consent to put himself under that government; and I do think that the poorest man in England is not at all bound in a strict sense to that government that he hath not had a voice to put himself under."[31] John Wildman, another Leveller leader, plainly responded to Ireton:

> I conceive that's the undeniable maxim of government: that all government is in the free consent of the people. If so, then upon that account there is no person that is under a just government, or hath justly his own, unless he has by his own free consent be put under that government.[32]

There is a very striking example—found in a letter attributed to Wildman, which was issued at the time of the Putney Debates—of the invective used by the opponents of the Levellers. In "A Call to All the Soldiers of the Army by the Free People of England" (October 29, 1647), Wildman warned the soldiers not to "take heed of the crafty politicians and subtle Machiavellians." If the soldiers did attend the meetings of the General Council of the army,

> be ye not frighted by the word 'anarchy', unto a love of 'monarchy', which is but the gilded name for 'tyranny'; for anarchy had never been so much as once mentioned amongst you had it not been for that wicked end. 'Tis an old threadbare trick of the profane Court and doth amongst discreet men show plainly who is for the Court and against the liberties of the people, who, whensoever they positively insist for their just freedoms, are immediately flapped in the mouths with these most malignant reproaches:
>
> 'Oh, ye are for anarchy. Ye are against all governments. Ye are sectaries, seditious persons, troublers both of church and state, and so not worthy to live in a commonwealth. There shall be a speedy course taken both against you and such as you."[33]

This is obvious proof that "anarchy" was a term of aspersion, even in the mid-seventeenth century. What is also interesting to note is that by that time the term had found itself in common usage in the political realm. The circumstances of the day (the Ship Money Controversy of 1634–1638 and the political turmoil and revolution of the early 1640s) dictated that at least one political theorist would realize that the theory of proprietary justice that the Levellers and other political protestants were espousing would lead one to anarchism. Their fundamental position, insisting that property was a natural right of the individual and that each person was a self-owner, led directly to government by consent, civil and religious liberty, and ultimately to an incipient sort of individualist anarchism. Sir Robert Filmer, in his tract *Patriarcha,* composed sometime between 1635 and 1642, was the first to note this anarchist tendency in this radical thought.

Despite the fact that Filmer (1588–1653) is perhaps best known as the royalist against whom Locke directed his *Two Treatises,* his treatment of consent theory

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has had a great deal to do with its development in English political thought.[34] He possessed an acute, critical mind and his chief biographer, Peter Laslett, has attributed "the destructive cast of his thought" to "his capacity for seeing straight through the arguments of others."[35] His was the strongest case ever made in his own century against consent theory, and when his collected political works were published in 1680, "three of the ablest minds on the Whig side had set to work to refute patriarchalism."[36] These were James Tyrell, Algernon Sidney, and John Locke, who were all as much concerned with his defense of royal absolutism as they were with his critique of government by consent. It was Filmer's primary contention that "stable governments could not be based on consent" because they would always be in danger of having that consent withdrawn.[37] "Filmer's critique included the recognition that free submission to government logically entailed the right of withdrawal through the same voluntary actions."[38] Therefore, Filmer saw consent theory as an open invitation leading to constant anarchy.

Filmer left no integrated corpus of thought, and many of his ideas are originally set forth in his *Patriarcha* and then repeated in his later tracts. However, his most mature and explicit criticism of the anarchist implications of consent theory are found in his treatise, *The Anarchy of a Limited or Mixed Monarchy* (1648), which was written as a rebuttal to Philip Hunton's 1643 work, *A Treatise of Monarchy*.[39] Filmer's main charge against Hunton was "that instead of a treatise of monarchy, he hath brought forth a treatise of anarchy."[40]

In *Patriarcha* and in *The Anarchy,* Filmer argues that "by nature all mankind in the world makes but one people" who are all "born alike to an equal freedom from subjection".[41] Since there are no natural political divisions in the world, Filmer concludes that "every man is at liberty to be of what kingdom he please." Therefore,

> every petty company hath a right to make a kingdom by itself; and not only every city, but every village, and every family, nay, and ever particular man, a liberty to choose himself to be his own King if he please; and he were a madman that being by nature free, would choose any man but himself to be his own governor. Thus to avoid the having but of one King of the whole world, we shall run into a liberty of having as many Kings as there be men in the world, which upon the matter, is to have no King at all, but to leave all men to their natural liberty. . . .[42]

Of course Filmer's point is that the right to secede from political society leads to anarchy and makes coercive political government an impossibility.[43] Filmer even went so far as to grant the seeming impossibility of all individuals having at one time agreed to their government. Even if this were so, Filmer demanded to know why this promise to abide by government could not be broken. Was a man prevented from withdrawing from a government once he had consented to it? "Who can say that such a man doth more than by right he may do?"[44] As Laslett observes, the right of any independent group of people "to set up their

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own political society without reference to the rest of mankind" inevitably implies a "universal, world-wide anarchy".[45] If it ever be imagined, as the Levellers thought, that each person was a self-owner, free, independent, and equal with all other human beings, then it would prove an impossibility to introduce any kind of legitimate government into the world, at least without unanimous consent of all those affected.[46]

Nonetheless, Filmer saw the world divided into numerous commonwealths. The defenders of these countries argued that they were legitimated by majority rule and tacit consent. But Filmer questioned if it was ever possible for the members of the entire world to assemble at one time and consent to its political subdivision. Notwithstanding this being an impossibility, Filmer further argued that majority rule could bind no one and that a majority of the earth's inhabitants (or even the majority of one country's citizens) could not justify political rule. "No one man, nor a multitude, can give away the natural right of another. . . . The acts of multitudes not entire are not binding to all, but only to such as consent unto them."[47]

Thus, in a very Spooneresque fashion, Filmer called into question the validity of majority rule and representative government. He said that "it cannot be showed or proved that all those that have been absent from popular elections did ever give their voices to some of their fellows."[48] Therefore, those who do not participate in an election cannot legitimately be bound by its outcome. Nor could it be countered that the silence of those in opposition or the silence of those who did not vote could be construed as an acceptance of the election. The "tacit assent" of the whole commonwealth to every government is a plain political fact. Yet from that we cannot conclude "that every Prince that come to a crown, either by succession, conquest or usurpation, may be said to be" acceptable to the people.[49] The tacit consent doctrine argues too much. "To pretend that a major part, or the silent consent of any part, may be interpretted to bind the whole people, is both unreasonable and unnatural."[50]

The supporters of consent theory argued that "the people" must consent to their government. This led such radicals as the Levellers to argue for universal manhood suffrage. Yet, as Filmer pointed out, what of women and children? Were they not "the people," too?[51] Furthermore, Filmer was confounded by the question of how one generation of "the people" could bind future generations. "Mankind is like the sea, ever ebbing or flowing, every minute one is born another dies; those that are the people this minute, are not the people the next minute."[52] If one person might be excluded, then the same reason that excludes that person might exclude many hundreds or thousands. Filmer, pushing consent theory to what he saw as a *reductio* posited that

> if it be admitted, that the people are or ever were free by nature, and not to be governed, but by their own consent, it is most unjust to exclude any one man from his right in government; . . . for the whole people is a thing

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> so uncertain and changeable, that it alters every moment, so that it is necessary to ask of every infant so soon as it is born its consent to government, if you will ever have the consent of the whole people.[53]

One of the most original and insightful of Filmer's commentaries occurs in his *Observations Concerning the Originall of Government* and is repeated in his "Preface" to *The Anarchy*. His point is that all government, by its very nature, is arbitrary, so it really makes no different what form government takes.

> We flatter ourselves if we hope ever to be governed without an arbitrary power. No: we mistake; the question is not whether there shall be an arbitrary power, whether one man or many? *There never was, nor ever can be any people governed without a power of making laws, and every power of making laws must be arbitrary.*[54]

Thus Filmer totally rejects the idea of a lawful government; "he repudiates at one fell swoop the idea of a 'government of laws, not of men' and its historical but not logical concomitant, the belief that a popular government cannot be arbitrary" because it is based on the will of the people.[55] As Filmer logically points out, "if it be tyranny for one man to govern arbitrarily, why should it not be far greater tyranny for a multitude of men to govern . . . ? It would be further inquired how it is possible for any government at all to be in the world without an arbitrary power; it is not power except it be arbitrary. . . ."[56] Not only does Filmer emphasize that it is impossible to get away from the fact that government by its very nature is arbitrary, but he identifies the "law-making" features of government as the essence of its arbitrariness. In an argument foreshadowing Spooner's "Essay on Natural Law," Filmer identifies perhaps the most tyrannical feature of all governments: their claims to make laws for the people.

Finally, Filmer presents us with one last argument demonstrating the anarchist implications of consent theory. Filmer found no constitutional solution to the problem of anarchy; for even a limited government or "mixed monarchy," as he termed it, was a contradiction in terms. Sovereignty must reside either in the people or in their monarch. It cannot be shared by both. Thus Hunton in his essay on monarchy caught himself "in a plain dilemma":

> If the King be judge, then he is no limited monarch; if the people be judge, then he is no monarch at all. So farewell limited monarchy, nay farewell all government, if there be no judge.[57]

If every man's conscience is the arbiter of the fundamental controversies, if the appeal must be to the community at large to settle disputes with the monarch, then as Filmer concluded, "The wit of man cannot say more for anarchy."[58] In Filmer's opinion, the end result of this would be "utter confusion and anarchy."[59]

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This review of Filmer's arguments demonstrates why his political tracts have an importance far surpassing the mere fact that Locke wrote in rebuttal to his *Patriarcha.* Filmer questioned the principle essential to all accounts of political obligation other than his own, the principle of consent.[60] Perhaps, it could be argued that Locke realized Filmer's uncanny and unerring ways of pushing consent arguments to their radical anarchist conclusions required their own answer. But the fact remains that Locke's effort seem to have gone for naught.

Locke presented us with a mixed bag of answers in *The Two Treatises of Government.* One of the problems he had in his mind was the problem of the legitimacy of political communities, both past and present. How was it that many, many centuries ago, and while still in a state of nature, men came to form political institutions? And what, if any, bearing did their actions have on contemporary governments? In Locke's writings the purpose of political authority was to protect life, liberty, and property of the citizenry. So long as these protections were offered by an agency that drew its authority from the consent of the people and did not degenerate into absolutism, political obligation appears to have been complete, according to Locke's thinking.[61]

"To Locke there was no question 'That the beginning of Politick Society depends upon the consent of the Individuals, to joyn into and make one Society', and he believed that reason and history clearly showed that 'the Governments of the World, that were begun in Peace, . . . were made by the Consent of the People.'"[62] Locke distinguished two sorts of consent "which subject an individual to the laws of a legitimate political society."[63] For Locke, the question of how one becomes a member of a state, and why one is obliged to obey it were separate questions. His use of the concepts of tacit and explicit consent helped illustrate this. Membership was limited to those who had expressly consented. "Express consent demands the making of some overt sign of agreement by the consenting party to the legitimacy of the social structure which he himself intends to be taken as a promise to obey the rules in the future. An oath of allegiance taken to a king is an obvious example. . . ."[64] Nonmembers, but residents in the geographic area over which the state exercised jurisdiction, incurred their obligations by giving tacit consent. "Tacit consent is incurred," according to Locke, "by anyone who voluntarily takes advantage of the resources of the country."[65] One's physical presence in the country's territory is a sufficient condition for being held in this way to have consented tacitly.[66]

One of Locke's basic premises, to which he reverts frequently throughout *The Second Treatise,* is that "Every Man being, as has been shewed, naturally free, and nothing being able to put him into subjection to any Earthly Power, but only his own Consent. . . ." Therefore, Locke wishes to inquire what "it is to be considered . . . shall be understood to be a sufficient Declaration of a Man's Consent, to make him subject to the Laws of any Government"? Locke answers:

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> No body doubts but an express consent, of any Man, entering into any society, makes him a perfect member of that society, a subject of that Government. The difficulty is, what ought to be looked upon as a tacit Consent, and how far it bind, ie, how far any one shall be looked on to have consented and thereby submitted to government, where he has made no expressions of it at all. And to this I say that every Man that hath any possession or enjoyment of any part of the dominions of any government doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government during such enjoyment as any one under it; whether this possession be of land to him and his heirs forever, or a lodging only for a week, or whether it be barely travelling freely over the highways and in effect it reaches as far as the very being of anyone within the territories of that government.[67]

Locke clearly recognizes that exclusive territorial sovereignty is one of the characteristics of government. Everyone living within a given geographic area is subject to the jurisdiction of that area's government. Locke indirectly realizes that the alternative to this would be anarchy, for he writes, "For it would be a direct contradiction, for any one, to enter into Society with others . . . And yet to suppose his Land, whose Property is to be regulated by the Laws of the Society, should be exempt from the Jurisdiction of that Government."[68] Therefore Locke concludes that when one unites "his Person" to any commonwealth, "by the same he unites his Possessions, . . . and they become, both of them, Person and Possession, subject to the Government and Dominion of that Commonwealth. . . ."[69]

If we are to assign any meaning to Locke's doctrine of consent, it is clear that people must have the opportunity to consent or not consent as they please. The only provision for not consenting in Locke's treatise is emigration from the commonwealth. This is Locke's escape from tyranny, for if people "are not permitted to emigrate, they can hardly be said to have consented." Emigration is a logical necessity within the framework of Locke's theory of consent, because without it, the whole theory loses its viability.[70] What Locke says is this: "The Obligation any one is under, by Virtue of such enjoyment, to submit to the government, begins and ends with the Enjoyment; so that whenever the Owner, who has given nothing but such a tacit consent to the Government, will . . . quit the said Possession, he is at liberty to go and incorporate himself into any other commonwealth," or to begin another one.[71] Thus, emigration should be a right every person should enjoy at every moment, unless he has committed himself to the commonwealth forever.[72]

Unfortunately for Locke's theory, his recognition of the right to emigration and to shed one's citizenship was not even recognized in his own day. Locke writes as though no persons born in the English commonwealth, or of English parents abroad, acquire their citizenship until they consent to become members of the Commonwealth, "as each comes to Age."[73] He claims that it is the practice of governments, "as well as by the Law of right Reason, that a Child is born

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a subject of no Country or Government," particularly in the case of English parents bearing a child in France.[74]

The truth of the matter is that governmental practice and the common law of allegiance had already developed to such a point in Locke's time that no child born within England, of parents who were subject to its jurisdiction, had any choice in the matter of what citizenship it acquired. They were considered to be English subjects by birth, by the mere fact of being born within the realm. Nor were English subjects permitted to shed their English citizenship at will, without the permission of the King. "The fundamental principle of the common law with regard to English nationality was birth within allegiance . . . and at common law it was firmly established that no citizen or subject possessed the power of throwing off his allegiance without the sovereign's consent."[75] Even "those born abroad of English parents, share the status of English subjects." One's status as a subject is ordinarily indelible and cannot be shed at will.[76] This was what it meant to be an English citizen throughout the seventeenth century. These interpretations had been confirmed by Calvin's Case in 1609, so surely Locke should have been aware that his theories did not meet the common law decisions. Emigration at Locke's time did not ordinarily permit the shedding of citizenship.[77]

We should not be surprised that Locke's doctrine of tacit consent cannot be taken seriously. It was not good scholarship, even in his own day, nor did it really provide a logically consistent response to the problem of political obligation. It was no more than a saving hypothesis "brought in to meet the difficulty that in fact men do not expressly declare their consent to the regime under which they live. All that (really) remains of Locke's teaching is that legitimate governments are those that secure the voluntary obedience of their subjects."[78]

Despite the problems with Locke's doctrine of consent, "his commitment to what he called consent is unassailable."[79] There is no question as to what he wrote; the only question is, Did he really mean what he said? "But I moreover affirm, that all Men are naturally in that State [the state of nature] and remain so, till by their own Consents they make themselves member of some Political Society. . . ."[80] And again, "Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of Another, without his own Consent."[81]

Yet at the same time, Locke was familiar with the thrust of Filmer's *reductios* and saw where his own doctrine was leading him. As Locke put it, "For if the consent of the majority shall not in reason, be received, as the act of the whole, and conclude every individual; nothing but the consent of every individual can make any thing to be the act of the whole: But such a consent is next impossible ever to be had. . . . Such a Constitution as this would make the mighty Leviathan of a shorter duration, than the feeblest Creatures; and not let it outlast the day it was born in. . . ."[82] Locke clearly realized that his own theory of consent, strictly interpreted, would lead to anarchy. His only way out was to make "con-

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sent'' include an agreement to abide by majority rule. ''Whosoever . . . united into a Community, must be understood to give up all the power . . . to the majority of the Community. . . .''[83]

Locke's outlook on property also wrestled with the problem of consent. ''The Supream Power cannot take from any Man any part of His Property without his own consent.''[84] Could one's property be taken from him against his will, as when taxes are levied and collected? Locke answered this problem in the following manner. He realized that the right to collect funds coercively was one of the most important needs of a government: ''Tis true, Governments cannot be supported without great Charge, and tis fit every one who enjoys his share of the Protection, should pay out of his Estate in proportion for the maintenance of it. But still it must be with his own Consent, i.e., the Consent of the Majority, giving it either by themselves, or their Representatives chosen by them.''[85]

It is plain that *The Two Treatises* is open to at least two readings: Locke, the individualist, whose consent theory leads to a radical libertarianism; and Locke, the conservative, who was attempting to justify the English political institutions of his time. It was not so long after the appearance of *The Two Treatise* in 1689 that Locke's ideas were used to justify the radical position. ''The transposition of Locke's doctrine'' to other political settings ''did indeed have subversive implications,'' for within a decade of the book's appearance, its author and his ideas were used to support the rights of the Irish parliament and Irish people.[86] William Molyneux (1656–1698) was an Irish friend and correspondent of Locke's, who represented Dublin University in the Irish parliament. During the late 1690s he was concerned with the effect of the recent legislation of the English parliament on the wollen and linen industries in Ireland. This and his correspondence with Locke led him in 1698 to publish ''The Case of Ireland's Being Bound by Acts of Parliament in England Stated.'' His basic purpose was to prove the legislative independence of the Irish parliament, and in doing this, he resorted to Locke's treatise as a justification for his position. ''Molyneux used the book and named Locke as its author at a time when Locke refused to acknowledge it even in private, and without asking his permission.''[87] The book created a stir in the English House of Commons, and a committee was appointed to investigate it for suspicions of treason. The committee ''unanimously resolved 'that the said book was of dangerous consequence to the crown and parliament of England.' ''[88] History has it that Molyneux's book was ordered to be burned by the common hangman.[89]

What was it that made Molyneux's book such a threat? Quite simply it was his insistence on a literal interpretation of Locke's consent theory. His critics realized that it led straight toward anarchy. The heart of Molyneux's argument sounds remarkably Lockean and anarchist. He wrote:

> I shall venture to assert, that the Right of being subject *only* to such laws, to which Men give their 'own' Consent, is so 'inherent' in 'all' Mankind,

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> and founded on such 'immutable' Laws of Nature and Reason, that 'tis not to be aliened, or given up by any Body of Men whatever. . . . I have no other Notion of 'Slavery'; but being bound by Law, to which I do not consent.[90]

Molyneux clearly understood the relationship between property rights and consent. "Consent is a necessary condition for the transfer of title. To use or dispose of another person's property without his consent is the fundamental act of injustice."[91] According to Molyneux:

> The Obligation of all Laws have the same Foundation, if 'One' Law may be imposed 'without Consent', any 'Other' Law whatever, may be imposed on us 'without our Consent'. This will naturally introduce 'Taxing us without our Consent'; and this as necessarily destroys our 'Property'. I have no other Notion of 'Property', but a 'Power of Disposing my Goods as I please', and not as another shall Command: Whatever another may 'Rightfully' take from me 'without my Consent', I have certainly no 'Property' in. To 'Tax' me without Consent, is little better, if at all, than 'downright Robbing me'.[92]

Molyneux was probably the first to explicitly relate these main elements of proprietary justice. Clearly there was no difference between taxation and robbery, if consent was unnecessary in the former case. Perhaps Molyneux would not have applied his theory in typical anarchist fashion to delegitimize all government (for he was arguing for an all-Irish parliament, which in all likelihood would itself have powers of taxation). Nonetheless, his ideas and reputation did survive his own death and were repeatedly "taken up with each burst of Irish national sentiment throughout the century, by Swift, Charles Lucas, by Garran and Pollock, even eventually by Wolf Tone."[93]

Other than Molyneux's claims for the Lockean theory of consent, its application to the colonial relationships within the British empire remained unexamined for the most part until the 1760s. Most theorists, applying Locke's doctrine of tacit consent, saw no incongruity between the legislative sovereignty of the English parliament and the conventional theory of Whig politics, which in turn was largely premised on *The Two Treatises.* The opponents of Molyneux in 1698 based their argument on the idea that emigration removed the right of direct representation in the English parliament. This eliminated the requirement for the emigrés' explicit consent to the acts of the parliament in England.[94]

Throughout the eighteenth century, Locke's idea of emigration and the idea of tacitly consenting to one's government by maintaining residence within the geographic area of its jurisdiction were ridiculed as an unsound theory. Indeed Adam Smith in his *Lectures on Justice, Police, Revenue, and Arms* (circa 1763) argued that most people under the dominion of a government cannot be said to give consent to that government, in the sense that they would consent to a contract. "To say that by staying in a country a man agrees to a contract of obedience to government is just the same with carrying a man into a ship and after he is

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at a distance from land to tell him that by being in the ship he has contracted to obey the master.''[95] David Hume, fifteen years earlier, asserted in his essay ''Of the Original Contract'' that it was ridiculous to claim ''that political connexions are founded altogether on voluntary consent or mutual promise.'' (''The magistrate would soon imprison you as seditious for loosening the ties of obedience, if your friends did not before shut you up as delirious for advancing such absurdities.'')[96]

> Can we seriously say that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day by the small wages which he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep, and must leap into the ocean and perish the moment he leaves her.[97]

Hume concluded that if tacit consent and the obligation of obedience, which it entails, reached all the inhabitants of a territory, then the most outrageous tyrant could be said to govern with the consent of his subjects.[98] ''If consent could be watered down like this, it would lose all value as a guarantee of individual liberty.''[99]

Perhaps the most interesting of the eighteenth century Lockean commentators was Josiah Tucker, who in *A Treatise Concerning Civil Government* (1781) ''opined that Locke neglected to carry the consent doctrine to its logical end—i.e., anarchism.''[100] Tucker (1713–1799) was a British clergyman with great interest in economic and political matters. He was an avid pamphleteer and polemicist. As matters were coming to the point of rebellion in the North American colonies, Tucker wrote of the American revolutionists as the ''most ungrateful, ungovernable, and rebellious people'' he had ever known.[101] He claimed that the Americans were virtually represented in parliament and ''he never doubted the right to tax them.''[102] Nevertheless, he took the unpopular stand, even before the outbreak of the revolution, that the Americn colonies should be allowed their independence. Their forceful inclusion in the British empire would only lead to both political and economic disruption for Britain herself and was therefore to be avoided.

Despite the fact that he refused to support the subjugation of the colonies by force, the appeal of the Americans to Locke's right of revolution ''filled him with anxious forebodings.''[103] As early as 1775, he declared that ''Locke's principles of government, if carried out as the Americans construed them, would destroy every government on earth.''[104] In 1778 he circulated a manuscript, ''The Notions of Mr. Locke and His Followers . . . Considered and Examined,'' which he later used in the preparation of his major work, *A Treatise Concerning Civil Government* (published 1781). To Tucker, the phrase ''consent of the governed'' was simply one ''loaded with dynamite.''[105] He assailed the Lockeans first for thinking that their form of government by consent was the only true government

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and then for not living up to their very own principles. He viciously pointed out that the American revolutionaries, who claimed liberty for themselves, refused to liberate their slaves or extend the franchise to include unpropertied men or women. In proving that the adherents of Locke pushed his principles to a *reductio ad absurdum,* Tucker quoted Molyneux, and other late eighteenth century supporters of Locke, such as Joseph Priestly and Richard Price. Tucker referred to Sir Robert Filmer, but only in a derogatory way.[106]

Tucker was fully aware of all the implications to be drawn from the Lockean system, and it was those implications, more than anything else, that made him fearful of its advocacy. He clearly saw the integral relationship between taxes, government, and slavery. Tucker claimed that the declarations of the Lockeans ultimately reduced themselves to the pronouncement "that the very Essence of Slavery doth consist in being governed by Laws, to which the Governed have not previously consented."[107] And he realized that if governments were to exist at all then "we must submit to Taxes" (which he clearly comprehended were compulsory levies and not voluntary contributions) because there was no other way of supporting them.[108]

> But say the Lockians, Taxes are the Free-Gift of the People:—Nay, they are the Free-Gift of each Individual among the People: "For even the Supreme Power (the Legislature) cannot (lawfully or justly) take from any Man any Part of his Property without his own Consent." This is Mr. Locke's own Declaration. And Mr. Molyneux corroborates it by another still stronger, viz. "To tax me without my Consent is little better, if at all, than down-right robbing me." In short all the Lockians hold one and the same Language on this Head: And therefore you must take their favourite Maxim for granted, or you will incur their high Displeasure: "You are an Advocate for Despotism, if you do not acquiesce in this Maxim: You attempt to defend what is down-right Robbery.[109]

Tucker viewed the Lockean system and the American revolution that it spawned as a "universal Demolisher of all Civil Governments, but not the builder of any."[110] The root of the American rebellion was to be found in the premise that "the imposing of Laws on them of any Kind, whether good or bad in themselves, and whether for the Purposes of Taxation, or for other Purposes, without their own Consent, is . . . a most intolerable Grievance! a Robbery! and an Usurpation on the unalienable Rights of Mankind."[111]

> In short, the brave American were resolved not to be Slaves; but Slaves, it seems, they must have been (according to the Lockian Idea) had they acknowledged the Right of the Mother Country, even in a single Instance, to make Laws to bind them without their Consent:—I say, even in a single Instance; for the Lockian Mode of Reasoning is, that there is no Difference between being vested with discretionary Power, and with a despotic Power. "Inasmuch as, if a Government has any Right to rule me without my Consent

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> in some Cases, it has a Right to rule me in every Case; consequently it has a Right to levy every Kind of Tax, good or bad, reasonable or exorbitant upon me, and to inflict all Sorts of Punishments whatever."[112]

Tucker's concept of government depended on the idea of quasi-contract or trust, on the obligation of subject and king to perform their implied duties. Reason, common sense, and the known laws of the land all coincided to reinforce the reciprocal duties of subject and governor in a manner unacceptable to those who rejected the tacit consent doctrine. One of Tucker's insightful observations was that the objection of those who rested their arguments on "explicit consent" (as opposed to the recognition of a quasi-contract or tacit consent) was that their real objections were not so much against the law themselves or the manner in which they were administered, but rather against the "Right, Title, or Authority to make, or to execute any Laws at all, be they in themselves good or bad."[113] The sole question between Tucker and his Lockean opponents was "Whether That Government is to be justly deemed an Usurpation, which is not founded on express mutual Compact of all the Parties interested therein, or belonging thereunto?"[114] Anarchists who took the Lockean notions to their logical finality were not concerned with the goodness or badness of governmental laws, but rather with the ultimate title or authority of governments themselves to legislate *any* laws at all. As Tucker puts it, "For the sole Point here to be determined, is simply this.—Had the Makers of such a Law any Right to make it, according to the Lockian Ideas of Right and Wrong?"[115]

To the anarchist, a man is a slave who is required to submit even to the best of laws or the mildest government that ever existed.[116] Coercion is still coercion regardless of how mildly it is administered. A man is free who submits to no one or no group of people, except as he himself has consented to it. "So the great Good of political Liberty, and the intolerable Evil of political Slavery, are according to this blessed Doctrine, resolved at last into the single Words—*Consent,* or *Not Consent.* . . ."[117] Although Tucker did not defend the anarchist conclusions of the Lockean principles, he was logician enough to see where they led. It was this power of mind that gives him, the nonlibertarian, a place in the libertarian history of the consent doctrine.

The radical abolitionists of the mid-nineteenth century incorporated the ideas of explicit consent into their attacks on slavery. Not only was slavery a violation of the slave's self-ownership rights, but it was obvious that people were forced into, and retained in, slavery against their will. Being held in bondage was a coercive situation, not one consented to by the slave. Being bound to pay taxes or support a coercive government was almost as evil as being made a slave. As Tucker pointed out, one of the earliest conclusions of the Lockeans, such as Molyneux, was that there was no other notion of slavery but being bound to a law to which one did not consent.

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There are two interesting examples made of the idea of consent by well-known antislavery radicals in the 1840s. Henry David Thoreau, as early as 1840, was protesting the assumption that his parents' membership in a church congregation automatically made him a member. (Much like the assumption that if one's parents are English, one's allegiance and citizenship are automatically British.) "In Thoreau's day, the church taxed each member of its congregation, and the taxes were billed and collected by the town officials."[118] The First Parish Church (Unitarian) of Concord "taxed" Thoreau in 1840, but he refused to pay. The tax was finally disallowed when at the request of some of the selectmen, Thoreau agreed to present them with the following statement: "Know all men by these presents, that I, Henry Thoreau, do not wish to be regarded as a member of any incorporated society which I have not joined." Thoreau adds that "if I had known how to name them, I should then have signed off in detail from all the societies which I never signed on to; but I did not know where to find a complete list."[119] One honestly wonders whether Thoreau ever considered himself as joining the Commonwealth of Massachusetts?

Thoreau's friend and confidant Charles Lane, in his series of letters published in 1843 on "A Voluntary Political Government," made a number of interesting comments about the meaning of citizenship. In a discussion of consent, Lane points out that the preamble to the state constitution of Massachusetts reads: "The body politic is formed by a voluntary association of individuals." If this be the true case, Lane argues, then his advocacy of "voluntary political government" entails a principle already embraced by the Commonwealth of Massachusetts in her very own constitution. As Lane explains,

> All, therefore, on behalf of which I am asserting may be summed up as the restoration of the primary constitutional principle. I give no strained or unusual value to the word "voluntary" on this occasion. Either it means choice, or it means nothing at all. If it does not assert the free voluntariness of every individual who comes into "the body politic" it signifies nothing; or at least nothing which common sense can lay hold of. If the voluntariness is to be confined to those who have the power, and they are to be at liberty to force every one into the association, then I must esteem this word "voluntary" to be a solemn mockery; and the sooner it is erased, and the term "forced" put in its stead, the sooner the words of the Constitution harmonize with the idea of its framers, and be at one with the very practice of its supporters.[120]

The nineteenth century thinker who, perhaps more than any other, elaborated on the significance and implications of government by consent was Lysander Spooner. Spooner (1808–1887) was a constitutional lawyer, abolitionist, and freethinker who became progressively more radical as he grew older. In an appendix to his *Essay on Trial by Jury*, published in 1852, Spooner noted (much like Molyneux and others) that it was a principle of the common law that no persons could be taxed without their personal consent. To Spooner, even before he saw the governmental carnage and atrocities of the Civil War, "taxation without

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consent'' was ''as plainly robbery'' whether it was enforced by one man against millions, or enforced by millions against one man who did not consent. ''Neither the numbers engaged in the act, nor the different characters they assume as a cover for the act'' could ever alter the fact that property was being forcefully taken from at least one person against his will. Spooner defended the principle of ''no taxation without consent'' in the following manner:

> If the government can take a man's money without his consent there is no limit to the additional tyranny it may practice upon him. . . . It is therefore a first principle, a very 'sine qua non' of political freedom, that a man can be taxed only by his personal consent. . . . Government have no more right, in nature or reason to 'assume' a man's consent to be protected by them, and to be taxed for that protection, when he has given no actual consent, than a fire or marine insurance company have to assume a man's consent to be protected by them, and to pay the premium, when his actual consent has never been given. To take a man's property without his consent is robbery; and to assume his consent where no actual consent is given, makes the taking none the less robbery. If it did, the highwayman has the same right to assume a man's consent to part with his purse, that any other man, or body of men, can have. And his assumption would afford as much moral justification for his robbery as does a like assumption, on the part of the government, for taking a man's property without his consent. The government's pretence of protecting him, as an equivalent for the taxation affords no justification.[121]

After the Civil War, Spooner wrote a series of pamphlets called *No Treason.* According to Spooner in these essays, governments and nations, if they can be said to rightfully exist at all, can exist only by consent, and this means: ''the separate individual consent of every man who is required to contribute, either by taxation or personal service, to the support of the government. . . . Either the separate individual consent of every man who is required to aid, in any way, in supporting the government is necessary, or the consent of no one is necessary.''[122]

In *No Treason,* No. 2, Spooner argued that ''either 'taxation without consent is robbery' or it is not. If it is not, then any number of men who choose, may at any time associate; call themselves a government, assume absolute authority over all weaker than themselves; plunder them at will; and kill them if they resist. If, on the other hand, 'taxation without consent is robbery,' it necessarily follows that every man who has not consented to be taxed, has the same natural right to defend his property against a taxgatherer, that he has to defend it against a highwayman.''[123]

In his final pamphlet of this series, *No Treason,* No. 6, ''The Constitution of No Authority,'' Spooner broke new ground by demolishing the theory of tacit consent. Spooner argued that merely living in a certain geographic area under control of a government, or voting in government elections, in no way implied one's consent to the government of that territory. Elections mean nothing; for

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Spooner showed that a majority of people never vote, and of those who do, the number supporting the elected candidates is so small (as a percentage of the population) as to be ludicrous. "Elections are secret; therefore, you cannot call representatives legal agents, since they do not know specifically whom they do represent." Therefore, having voted in an election in no formal way demonstrates that one consented to anything. "On the question of the Constitution itself, no vote ever had been taken, and as a legal contract the Constitution has no validity."[124] According to Spooner,

> the Constitution was never signed, nor agreed to, by anybody, as a contract, and therefore never bound anybody, and is now binding upon nobody; and is, moreoever, such a one as no people can ever hereafter be expected to consent to, except as they may be forced to do so at the point of the bayonet.[125]

The anarchistic implications of all this should be quite clear. The state has no right to raise any taxes except as they are "voluntary" contributions or "contractual" obligations for services rendered.[126] In fact the historical origin of taxation demonstrates its relationship to the idea of consent. At least some forms of taxation "were matters of voluntary grant," but "their history is bound up with the gradual growth of the right of the majority to bind the individual." During the reign of Henry III (1227–1258), an example is cited of a nobleman claiming immunity from a tax "on the ground that he as an individual had not consented to its levy."[127] As another commentator has pointed out, "consent no longer effectively safeguards the sanctity of private property if it ceases to be personal and individual." Yet the very growth of such expressions as "no taxation without representation" tended to purposefully obscure this important point. Once the parliamentary practice became accepted by which "electors appointed representatives, or proxies, to give consent in their name," the sense of individual consent to taxation "inevitably lost ground."[128]

In its extreme form the doctrine of consent signifies that a man is bound only by what he consents to. If individual consent is the only rightful source of power, the question must be raised why "even a single objector should be coerced, possibly against his own conscience."[129] This "anarchial principle" has always been embraced by radical libertarians, and certainly no one belabored the point more than did Spooner.[130] As one of the major contributors to the development of the proprietary theory of justice in the libertarian tradition, one of Spooner's greatest achievements was "to demolish the tacit consent doctrine, particularly as it applied to the U.S. Constitution. Spooner's natural rights theory, combined with his refusal to recognize the surrender of rights through tacit consent, brings out the radical anarchism latent in the Lockean tradition."[131]

Certainly one critical element of the proprietary theory of justice was the view that one's just property titles could not be rightfully alienated without one's consent. That is what it meant to own property or exercise dominion over one's own. This was noted by some of the predecessors of the Levellers, as well as

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by the Levellers and other seventeenth century political thinkers. Two years after Ponet's treatise appeared, Christopher Goodman published his *Superior Powers* in 1558, in which he embraced natural rights, "declaring that men 'may lawfully claim' their liberty 'as their own possessions,' and concluding that 'if they suffer this right to be taken from them,' they are letting themselves be robbed no less than if they let their rulers remove any of their other goods."[132] A century later, Richard Baxter, an English clergyman, reiterated the same point: "Propriety is naturally antecedent to government. . . . Every man is born with propriety in his own members, and nature gives him a propriety in . . . [the] just acquisitions of his industry. Therefore no rule can justly deprive men of their propriety, unless it be . . . by their own consent. . . . And men's lives and liberties are the chief parts of their propriety."[133] The radicalism of consent doctrine was twin-edged. No one could be obliged to obey a government to which he or she did not consent; but even more significantly, no one could be bound to contribute their "lives" or "properties" to such a government either. The necessity of having voluntary consent to taxation or conscription makes government an impossibility.

Radical political philosophy since the seventeenth century has been characterized to a large extent by these forms of "voluntaryism," "by an emphasis on the assent of individuals as the standard of political legitimacy."[134] This review of consent theory in the libertarian tradition has sought to demonstrate that the individualist and voluntaryist character of the consent doctrine would actually "deprive every existing polity of its legitimacy."[135] Its most perceptive critics, such as Sir Robert Filmer and Josiah Tucker, clearly saw this, and their critiques of consent theory were largely premised on this realization. Both Filmer and Tucker believed that the supporters of consent were "either internally inconsistent or disastrous in their prospective practical implications. Either their positions must be instances of remarkable stupidity or they must be held in bad faith. If they mean what they say, their beliefs would imply anarchy."[136] They charged their opponents "with either evading the question or adopting theories that logically destroyed the moral authority of government. . . ."[137] Other thinkers who embraced Lockean ideas were often not aware of the ultimate implications that could be deduced from their initial premises. There is no question but that "consent implies voluntariness and the association of almost every individual with the government which has control over him is clearly involuntary."[138] So for nearly three centuries now, the most perceptive political theorists have perceived that there is a large, unbridgeable chasm between the idea of consent and government. There is simply no way to cross that bridge, for inevitably to contend that government rests on consent is to begin the descent on the slippery slope to anarchism.[139]

NOTES

1. A. S. P. Woodhouse, ed., *Puritanism and Liberty* (Chicago: University of Chicago Press, 1951), p. 59 of The Putney Debates.

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2. George H. Smith, "William Wollaston on Property Rights," *Journal of Libertarian Studies* 2 (1978):217–24, at 224.
3. Ibid.
4. Winthrop S. Hudson, *John Ponet* (Chicago: University of Chicago Press, 1942). Note that this volume also includes a photographic reprint of Ponet's work *(A Shorte Treatise of Politike Power; And of the True Obedience Which Subiectes Owe to Kynges and Other Civile Governours, With an Exhortacion to All True Naturall Englishemen, 1556).* References to Ponet refer to this photographic reprint. See Ponet, *A Shorte Treatise,* title page and pp. 21, 35, 47, 79, 98.
5. Quentin Skinner, *The Foundations of Modern Political Thought,* Vol. 2 (Cambridge: Cambridge University Press, 1978), pp. 223, 320.
6. Hudson, op. cit., p. 144, and Ponet, op. cit., p. 88.
7. Hudson, op. cit., p. 137, and Ponet, op. cit., pp. 26–28.
8. Ponet, op. cit., p. 107.
9. Hudson, op. cit., p. 158.
10. Skinner, op. cit., p. 343.
11. Hudson, op. cit., p. 160.
12. Ibid., p. 210.
13. Ibid., p. 216, citing Charles Francis Adams, ed., *The Works of John Adams,* Vol. 6 (Boston: Charles C. Little and James Brown, 1851), p. 4.
14. *The Oxford English Dictionary,* Vol. 1 (Oxford: At The Clarendon Press, 1933), see "anarchical," "anarchism," and "anarchy," pp. 307–8.
15. Gordon Schochet, *Patriarchalism in Political Thought* (New York: Basic Books, 1975), p. 107.
16. *The Oxford English Dictionary,* op. cit., p. 307.
17. Woodhouse, op. cit., Introduction, p. 51.
18. William Haller, ed., *Tracts on Liberty in the Puritan Revolution,* Vol. 3 (New York: Columbia University Press, 1934), p. 172, which is p. 56 of Parker's text.
19. Woodhouse, op. cit., Introduction, p. 33.
20. Ibid., pp. 53, 65–68.
21. Ibid., p. 69, which is pp. 3–4 of Overton's text.
22. Ibid., p. 75.
23. Ibid., pp. 72, 75, 85–86.
24. Ibid., p. 322, Sec. 8, "Leveller Principles," citing from the Levellers' "Large Petition."
25. Carl Watner, ed., *A Voluntary Political Government: Letters from Charles Lane* (St. Paul: Michael E. Coughlin, 1982), p. 33.
26. Woodhouse, op. cit., Introduction, p. 87.
27. Carl Watner, "'Come What, Come Will!' Richard Overton, Libertarian Leveller," *Journal of Libertarian Studies* 4 (1980): 405–32, at 406, citing Perez Zagorin, *A History of Political Thought in the English Revolution* (London: Routledge and Kegan Paul, 1954), p. 41.
28. Ibid., p. 408, citing H. N. Brailsford, *The Levellers and the English Revolution* (London: Cresset Press, 1961), p. 264.
29. Woodhouse, op. cit., The Putney Debates, p. 75.
30. Watner, op. cit., p. 409, citing Woodhouse, op. cit., Introduction, p. 91.
31. Woodhouse, op. cit., The Putney Debates, p. 53.
32. Ibid., p. 66. Note, however, that Wildman was arguing for a representative government with an expanded franchise, and not for anarchism.
33. Woodhouse, op. cit., Documents Relating to the Putney Debate, p. 440.
34. James Daly, *Sir Robert Filmer and English Political Thought* (Toronto: University of Toronto Press, 1979), p. 83.
35. John W. Robbins, "The Political Thought of Sir Robert Filmer" (Ph.D. dissertation, Johns Hopkins University, 1973), p. 17; and Peter Laslett, "Sir Robert Filmer," *William and Mary Quarterly* 5 (1948, 3rd series):521–46, at p. 546.
36. Daley, op. cit., p. 86; and Peter Laslett ed., *"Patriarcha" and Other Political Works of Sir Robert Filmer* (Oxford: Basic Blackwell, 1949), p. 36.
37. Daley, op. cit., p. 89.
38. Schochet, op. cit., p. 129.

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39. J. W. Allen, "Sir Robert Filmer," in F. J. C. Hearnshaw, *The Social and Political Ideas of Some English Thinkers of the Augustan Age* (London: George G. Harap & Co., 1928), pp. 27–46, at 28.
40. Laslett, ed., *Works*, p. 294. All references to Filmer's works are to those appearing in the Laslett edition and will be cited as Laslett, ed., *Works*.
41. Ibid., p. 285.
42. Ibid., p. 286.
43. Ibid., p. 81.
44. Allen, op. cit., p. 36.
45. From Laslett's "Introduction" in Laslett, ed., *Works*, cit., p. 16.
46. Schochet, op. cit., p. 123.
47. Laslett, ed., *Works*, p. 82.
48. Ibid.
49. Ibid.
50. Ibid., p. 225.
51. Ibid., p. 287.
52. Ibid.
53. Ibid., p. 211.
54. Ibid., p. 277. Emphasis added.
55. Robbins, op. cit., p. 170.
56. Laslett, ed., *Works*, p. 254.
57. Ibid., p. 259.
58. Ibid., p. 300.
59. Ibid., p. 297.
60. From Laslett's Introduction, *Works*, p. 31.
61. Schochet, op. cit., p. 260.
62. Ibid., p. 261, citing Locke's *Second Treatise*, sections 117 and also sections 95, 112, 119–121, 192, 197, 198. Note all references to Locke's *Second Treatise* will refer to Peter Laslett, ed., *Two Treatises of Government* (Cambridge: At the University Press, 1960). Citations will not be by page number but rather to sections. Hence, Laslett, ed., *Locke*, II, 117 refers to section 117 of the *Second Treatise*.
63. John Dunn, *The Political Thought of John Locke* (Cambridge: At the University Press, 1969), p. 131.
64. Ibid., p. 133.
65. Ibid., p. 131.
66. Gordon J. Schochet, ed., *Life, Liberty, and Property: Essays on Locke's Political Ideas* (Belmont, Calif.: Wadsworth Publishing Co., 1971), p. 8. Schochet in his Introduction makes the point that Locke distinguished between expressly consenting to membership in political society and mere presence, or tacit consent.
67. Laslett, ed., *Locke*, II, 119.
68. Ibid., II, 120.
69. Ibid.
70. Dunn, op. cit., p. 140.
71. Laslett, ed., *Locke*, II, 121.
72. Dunn, op. cit., p. 133, citing Laslett, ed., *Locke*, II, 115, 116, and 121. This borders on a problem Filmer raised, which is how a person can commit himself to citizenship for life. Is it possible that once express consent is given, it can never be withdrawn?
73. Laslett, ed., *Locke*, II, 117.
74. Ibid., II, 118.
75. *Corpus Juris*, Vol. 11 (New York: American Law Book Co., 1917), pp. 783 and 787 under reference "Citizens."
76. Dunn, op. cit., p. 137 citing Sir William Holdsworth, *A History of English Law*, Vol. 9, 3rd ed. (London: Methuen & Co., 1944), pp. 84, 86.
77. Even today, governments jealously guard the right of emigration and are concerned about the related loss of tax revenues that emigration entails. For example, the United States Internal Revenue Code, Sections 877 and 2107, did (and may still) provide that anyone who renounced

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U.S. citizenship with the purpose of tax avoidance would still be responsible for paying taxes to the U.S. government for ten years after such renunciation. As one commentator put it: "The United States government deems citizenship a privilege to be matched by the burden of taxation." Lloyd Shefsky and Lee Barbkoff, "Taxation and Emigration," *Tax Haven Review* 2 (1975):10.

78. P. H. Partridge, *Consent and Consensus* (New York: Praeger, 1971), p. 22.
79. Schochet, op. cit., p. 261.
80. Laslett, ed., *Locke,* II, 16.
81. Ibid., II, 95.
82. Ibid., II, 98.
83. Ibid., II, 99.
84. Ibid., II, 138.
85. Ibid., II, 140.
86. John Dunn, *Political Obligation in Its Historical Context* (Cambridge: Cambridge University Press, 1980), p. 68.
87. Ibid. Dunn at footnote 35, p. 314, cites from Molyneux's correspondence with Locke: "How justly they can bind us without our consent and representives, I leave the author of the *Two Treatises of Government* to consider."
88. *The Dictionary of National Biography,* vol. 13 (London: Oxford University Press, 1967–1968), p. 587.
89. Ibid., which claims that this is a false belief. See H. F. Kearney, "The Political Background to English Mercantilism 1695–1700," *Economic History Review* 2 (1958–1959, 2nd series) at p. 491 for the statement that the book was condemned to be burned.
90. Robert Livingston Schuyler, ed., *Josiah Tucker: A Selection from His Economic and Political Writings* (New York: Columbia University Press, 1931), pp. 416–17. Tucker in *A Treatise Concerning Civil Government* (London: T. Caldwell, 1781) cites this and the next passage as being from pp. 113 and 169 of Molyneux's book. For reprint of these passages, see also Carl Watner, "The Proprietary Theory of Justice in the Libertarian Tradition", *Journal of Libertarian Studies* 6 (1982):289–316, at 301–2.
91. Smith, op. cit., p. 222.
92. Schuyler, op. cit., p. 416.
93. Dunn, *Political Obligation,* pp. 68–69.
94. Ibid., p. 69.
95. Herbert W. Schneider, ed., *Adam Smith's Moral and Political Philosophy* (New York: Hafner Publishing Co., 1948), p. 289, from Adam Smith's "Lectures on Justice, Police, Revenue, and Arms," Part I, Division I, Section 1.
96. Henry Aiken, ed., *Hume's Moral and Political Philosophy* (New York: Hafner Publishing Co., 1948), p. 359, from David Hume's essay "Of The Original Contract."
97. Ibid., p. 363.
98. Ibid., p. 365.
99. J. W. Gough, *The Social Contract,* 2nd ed. (Oxford: At the Clarendon Press, 1957), p. 139.
100. George Smith, op. cit., p. 224.
101. Schuyler, ed., op. cit., p. 35, citing p. 435.
102. Ibid., p. 35.
103. Ibid., p. 41.
104. Ibid., citing p. 378.
105. Ibid., p. 41.
106. Apparently Josiah Tucker did not want to be associated with Filmer as a defender of the divine right of kings. Undoubtedly Tucker wanted to be free of any claim that his argument and that of Filmer were similar. For the one reference by Tucker to Filmer, see ibid., pp. 450–52.
107. Ibid., p. 452.
108. J. W. Gough, *John Locke's Political Philosophy* (Oxford: At the Clarendon Press, 1951), p. 90. Locke would probably have been prepared to "allow taxation to be levied by decision of a majority," but this is as far as he would have gone. "He would have required strictly individual consent to justify any other kind of interference with private property."

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109. Schuyler, ed., op. cit., p. 444.
110. Ibid., p. 459.
111. Ibid., p. 460.
112. Ibid.
113. Ibid., p. 479.
114. Ibid., p. 412.
115. Ibid., p. 452.
116. Ibid., p. 480.
117. Ibid.
118. Walter Harding, ed., *The Variorum Civil Disobedience by Henry David Thoreau* (New York: Twayne Publishers, 1967), p. 61.
119. Ibid., p. 45, from "The Essay on Civil Disobedience."
120. Carl Watner, ed., *A Voluntary Political Government,* pp. 40, 83.
121. Charles Shively, ed., *The Collected Works of Lysander Spooner* (Weston, Mass.: M & S Press, 1971), from "An Essay on Trial by Jury" (1852) in *The Collected Works,* vol. 2, pp. 222–23.
122. Spooner, *No Treason,* No. 1 (1867), in Ibid., vol. 1, pp. 10–11.
123. Spooner, *No Treason,* No. 2 (1867), in Ibid., vol. 1, p. 13.
124. Charles Shively, Introduction to Lysander Spooner, *No Treason,* No. 6, "The Constitution of No Authority" (1870), in Ibid., vol. 1, p. 3.
125. Spooner, *No Treason,* No. 6, in Ibid., vol. 1, p. 59.
126. Dunn, *Political Obligation,* op. cit., p. 43.
127. A. F. Pollard, *The Evolution of Parliament* (New York: Longman's, Green & Co., 1920), p. 143.
128. Gough, *Locke's Political Philosophy,* op. cit., p. 49.
129. Ibid., p. 58.
130. Ibid.
131. Watner, "Proprietary Theory," op. cit., p. 304, citing George Smith, op. cit., p. 224.
132. Quentin Skinner, op. cit., Vol II, p. 320.
133. Richard Schlatter, *Richard Baxter and Puritan Politics* (New Brunswick: Rutgers University Press, 1957), p. 39, citing from Baxter's *Second Part of the Nonconformists Plea for Peace* (1680), pp. 54–55.
134. Patrick Riley, "How Coherent is the Social Contract Tradition?" *Journal of the History of Ideas* 34 (1973):543–62, at 543. His reference however is to the term "voluntarism," not voluntaryism.
135. Dunn, *Political Obligation,* op. cit., p. 48.
136. Ibid., p. 63.
137. J. W. Allen, op. cit., p. 42.
138. C. W. Cassinelli, "The 'Consent' of the Governed", *Western Political Quarterly* 12 (1959):391–409, at 398.
139. Watner, "Proprietary Theory," op. cit., p. 303, referring to this as a point made by George Smith.

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Explaining the Antiwar Movement, 1939–1941: The Next Assignment

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Few years in the history of the world have been as significant as the years 1939–1941. Not only did a cataclysmic conflict break out, far more worthy of being called a genuine world war than its predecessor, but large areas of the globe changed hands. By the end of 1941, a new German Empire dominated Western Europe and much of Eastern Europe as well. The Japanese Empire had penetrated extensively into China, held northern Indochina, and was threatening the Philippines, Singapore, and the Dutch East Indies. Moreover, France was under occupation, while much of her empire was divided between Vichy and Free French forces. If most of the British Empire was intact, the home isles were under siege, and such lifelines as the Suez Canal were severely threatened.

Yet, during all this time, major segments of the American public hoped that the United States would not enter this new world war. While most sympathized with the Allied cause, they did not deem the survival of either Britain or China worth the risk of American involvement. In fact, they argued conversely—that full-scale participation in the war would help destroy whatever global balance remained and would ruin the internal fabric of American society. A minority of these Americans were pacifists, people who opposed participation in any given conflict. The majority, however, were isolationists, or—as they preferred to be called—"anti-interventionists" or "nationalists." In the words of historian Manfred Jonas, these people sought "the avoidance of political and military commitments to or alliances with foreign powers, particularly those in Europe."[1] (Of course, pacifists—like isolationists—often offered pragmatic reasons for their stance, reasons that must be covered in any account of the antiwar movement.) Like their interventionist counterparts, these isolationists realized that at stake was nothing less than the course the United States would follow for years to come.

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During the past thirty years, there has been intensive research on anti-interventionism, and a thorough bibliographical essay would comprise well over a hundred pages.[2] Works on prominent personalities, organizations, and legislation are indeed abundant, and Wayne S. Cole's *Roosevelt and the Isolationists, 1932–45* (1983) offers an able, comprehensive account.

Given this plethora of research, we are now ready for the next step, one that goes beyond historical narrative to what is far more intangible, the matter of anti-interventionist *perception.* Here one builds upon Manfred Jonas's pioneering work, *Isolationism in America* (1966). Many historians have undoubtedly concurred with the recent claim of Professor Cole. To Cole, Roosevelt was "less than frank with Congress and the public, but he slowly educated them on the dangers of the Axis menace and on the wisdom of aid short-of-war to the victims of Nazi aggression."[3] Hence it is all the more imperative to treat systematically *why* the anti-interventionists believed the way they did, not simply to trace their reactions to various administrative proposals. For the anti-interventionists, too, saw themselves involved in educating the public, educating it on what they perceived as the dangers of entering the war and on the wisdom of defense and economic policies based upon a hemispheric perspective. To them also the question was one of survival.

Obviously such a study must be grounded in part in the traditional sources: congressional debates and testimony concerning legislation; the papers of various foreign-policy makers and their critics; and the manuscript collections of various anti-interventionist groups.[4] But a study focusing on perception must be more than usually conversant with different kinds of sources as well, and here the press is crucial.

Much attention has centered on the *Chicago Tribune,* and not just because of its wide circulation. Rather, Colonel Robert R. McCormick was so eccentric that he always made good copy. Relatively little has been done with its sister journal, Captain Joseph Patterson's *New York Daily News.* Yet the *News* had the largest circulation of any newspaper in the United States. Furthermore, for all its focus on sex and scandal, it was surprisingly respected. The isolationism of its chief editorial writer, Reuben Maury, no more prevented him from receiving a Pulitzer Prize than had an antiwar motif interfered with the *News*'s cartoonist C. D. Batchelor winning a Pulitzer in 1937.

Any systematic study of isolationist perception should pay much attention to the Scripps-Howard press, owned by the dapper, cautious Roy Howard. Scripps-Howard gave a national forum to a host of anti-interventionist columnists, including General Hugh Johnson, Major Al Williams, John T. Flynn, and—in the *New York World-Telegram*—Harry Elmer Barnes. (Hugh Johnson summarized much of his position in *Hell-bent for War* [1941].) Despite Roy Howard's own reluctant endorsement of lend-lease in February 1941, the chain remained highly suspicious of Roosevelt's interventionism.

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Needing far more attention is the Hearst chain, in its decline but still influential. Beginning in February 1940, William Randolph Hearst wrote a long daily column, "In the News," in which he spoke frequently on foreign policy. (Among other things, he told the British that to win the war they must dismiss Churchill, give Beaverbrook more power, and bring back Hore-Belisha.) The Hearst press also featured a daily column by the one isolationist radio commentator with a national audience, Boake Carter. (Broadcaster Fulton Lewis, Jr., who also had ties to the Hearst press, occasionally criticized Roosevelt's foreign policy.) Hearst's senior correspondent, Karl H. von Wiegand, had some of the most remarkable contacts of any American journalist; these included access to Hitler and Goebbels.

Monthlies can be an even more significant source, for the contributors often take the long view, that is to say, their opinions transcend immediate response to specific legislative proposals. The preponderance of articles in the conservative *Atlantic Monthly* was strongly interventionist, though it did give an occasional forum to isolationist correspondent William Henry Chamberlin. Charles A. Lindbergh and his wife Anne Morrow Lindbergh each appeared once in its pages. *Harpers* was both more involved with foreign affairs and less one-sided. It gave much play to the *New York Times*'s military expert, Hanson W. Baldwin, a man critical of extended commitments, and it occasionally featured articles by Chamberlin, Frank C. Hanighen, and C. Hartley Grattan. The *Reader's Digest* was more than generous in opening its pages to a host of isolationists, including Herbert Hoover, the Lindberghs, Hugh Johnson, John T. Flynn, and Freda Utley. (It did balance its fare with a number of interventionists, including Walter Millis, Walter Lippmann, Robert E. Sherwood, Dorothy Thompson, Douglas Miller, and Wendell Willkie.) *Scribner's Commentator* was a virtual anthology of anti-interventionism, particularly of a rightist variety.

The political weeklies, by and large, were interventionist. Surprisingly enough, when World War II first broke out, the Luce publications were benevolently neutral toward the Allies. In the spring of 1940, publisher Henry R. Luce and his wife Clare Boothe Luce visited Europe, getting caught in the German invasion of the Low Countries. Ever after *Time* and *Life* (and the monthly business magazine *Fortune*) were strongly interventionist. *Newsweek,* backed by no single owner or policy, did not preach intervention quite so fervently as *Time.* Former brain-truster Raymond Moley often spoke against intervention in his weekly back-page column. David Lawrence's *United States News* was strongly interventionist, arguing that the United States could not retain a capitalist economy if surrounded by totalitarian commercial systems. However, Lawrence permitted anti-interventionists to utter brief statements on controversial issues. When war first broke out, *Look* magazine opened its pages to such isolationists as Senator Gerald P. Nye and General Hugh Johnson, but by the end of 1940 only interventionists could be found in its pages. The *Saturday Evening Post* was strongly anti-

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interventionist, both in the editorials written by Garet Garrett and in the play it gave to such pacifists as Milton Mayer. Though its supposed conversion to interventionism was heralded in May 1941, it quickly denied changing its position. Its foreign correspondent Demaree Bess had isolationist leanings.

Of the major liberal opinion magazines, *Common Sense* remained isolationist the longest. While, by late 1940, editor Alfred M. Bingham edged further to an interventionist position, co-editor Sheldon Rodman remained chary of the war. Washington correspondent Frank Hanighen was firmly anti-interventionist. The *New Republic* turned to interventionism in mid-June 1940, and it fired its isolationist columnist John T. Flynn that November. The son of the *New Republic*'s owner, Michael Straight, notes in his recent autobiography (*After Long Silence*, 1983) that he became Washington editor of the journal with the expressed purpose of "driving the magazine into a position of all-out support for Britain."[5] The *Nation* had always been interventionist, though it was only in late June 1940 that its pacifist former publisher, Oswald Garrison Villard, parted company. The *Progressive*, owned by the La Follette family and edited by Morris Rubin, had a good many anti-interventionists contribute to its pages.

Weekly newsletters are extremely valuable sources. Highly respected among anti-interventionists was the newsletter *Uncensored*, originally edited by Sidney Hertzberg, a Socialist who had worked on the *New York Times* and *Time*. Frank Hanighen collected its war news, and its editorial sponsors included Harry Elmer Barnes, John Chamberlain, Stuart Chase, C. Hartley Grattan, Quincy Howe, George R. Leighton, Ferdinand Lundberg, Hubert Herring, and Oswald Garrison Villard. The sporadic bulletins of Porter Sargent, editor of a handbook of private schools, focused on British activities. They are conveniently collected in his book *Getting US into War* (1941). *Propaganda Analysis*, published by the Institute for Propaganda Analysis, attempted to demolish myths created by all the belligerents.

Of all such efforts, Lawrence Dennis's *Weekly Foreign Letter* was the most rigidly isolationist. Within its pages, Dennis predicted Axis victory and the decline of an Anglo-American capitalist order, but he said that the United States could only weaken itself further by entering the war. Dennis's views deserve extensive treatment not because he was typical of the isolationist position, but because he was not. He offers a crucial reference point from which to measure the positions of his more moderate brethren.

The left offered a particularly fertile field for isolationist sentiment. There were a number of Socialist journals, most of which opposed intervention strongly. The weekly *Socialist Call* had spirited columns by party leaders Norman Thomas ("Your World and Mine") and Lillian Symes ("Hold That Line"). (Similar Thomas views could be found in the volume he wrote with Bertram D. Wolfe in 1939, *Keep America Out of War.*) Until the summer of 1940, the party also published the bimonthly *Socialist Review*, but the defection of interventionist party

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members helped kill the journal. V. F. Calverton's *Modern Quarterly* could not survive the editor's death in 1940. However, while it lasted, its antiwar contributors included Norman Thomas, Scott Nearing, and Harry Elmer Barnes. Oscar Ameringer's independent Socialist weekly, *American Guardian,* frequently reprinted columns from such anti-interventionist sources as Ernest L. Meyer, Porter Sargent, Oswald Garrison Villard, H. L. Mencken, and McAlister Coleman. Further to the left than the Socialist Party but still not Communist, it was sympathetic to the Russian war effort after the German invasion but still remained isolationist.

The Communists, isolationist from the time of the Hitler-Stalin pact to the time of Germany's invasion of Russia, had several publications. The *Daily Worker,* edited by Clarence A. Hathaway, hammered at the British Empire and promoted the American Peace Mobilization. The weekly *New Masses* did the same; various isolationist and anti-British articles were written by Joseph Starobin, Theodore Draper, J. B. S. Haldane, Ruth McKenney, and for a brief time Richard H. Rovere. Included in the offerings of the *Communist* was a major critique of Lawrence Dennis's *The Dynamics of War and Revolution. Friday,* a weekly imitating *Life* magazine, could feature historian Charles A. Beard's attack on the movie *The Ramparts We Watch* one week, a denunication of the historical novels of Kenneth Roberts the next. (Ironically, though Roberts's novel of the American revolution, *Oliver Wiswell* [1940], was attacked for being too pro-British, Roberts himself was a strong isolationist.) While *Friday*'s editor, Dan Gillmor, the son of a rear admiral, denied that he was ever a Communist, the journal hewed closely to the party line. The same holds true for George Seldes, editor of the weekly exposé newsletter *In Fact. US Week* was another weekly that followed the party line. Closely resembling *Pathfinder* in format, it contained contributions from Leo Huberman and William E. Dodd, Jr.

Various leftist factions each had their own press. The weekly Trotskyist *Socialist Appeal* (which in February 1941 became the *Militant*) had anti-interventionist columns by James Burnham and Dwight Macdonald, though infighting within the Socialist Workers Party led to their exile. Macdonald retained a forum through the independent Trotskyist *Partisan Review,* in which he and fellow isolationist Clement Greenberg debated Philip Rahv. A minority faction of the Trotskyists published *New International,* which also featured Macdonald.

Of all the religious journals opposed to intervention, the *Christian Century* was undoubtedly the most significant. Its editor, Charles Clayton Morrison, was neither a pacifist nor an isolationist, but he strongly opposed Roosevelt's foreign policy. Adherents of the brand of "Christian realism" espoused by Reinhold Niebuhr were quite unfair in accusing Morrison of unmitigatged naiveté, for his editorials on world order, published in February and March of 1941, had some most perceptive features. And after Villard left the *Nation,* he wrote frequently for the *Christian Century.*

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The monthly *Catholic World* was the most outstanding Roman Catholic journal of opinion. Published by the Paulist fathers and edited by James M. Gillis, it claimed that the conflict was far from being a holy war. Rather the struggle centered on reallocating the earth's surface. The Jesuit weekly *America* offered analyses of the current news, always from the anti-interventionist perspective. In March 1940, Ezra Pound contributed an attack on the gold standard. *Commonweal,* a lay-edited weekly, was more moderate in its isolationism, but the view was nonetheless there. Father Charles E. Coughlin's vitriolic *Social Justice* included isolationist contributions from architect Philip Johnson, theologian John A. O'Brien, and "British correspondent" J. S. Barnes. Although Coughlin himself contributed only an occasional piece, and one E. Perrin Schwartz was editor, a mere glance at any issue shows the radio priest in firm control.

Pacifists had two major journals. *Fellowship,* the monthly of the Fellowship of Reconciliation, was edited by FOR executives John Nevin Sayre and A. J. Muste. Contributions ranged from a fifteen-page critique of Reinhold Niebuhr by Scottish theologian G. H. C. MacGregor, published in June of 1941, to favorable coverage of books by Anne Morrow Lindbergh and Porter Sargent. *Peace Action* was a monthly of the National Council for the Prevention of War. While most of the journal presented the views of Frederick J. Libby, the NCPW executive secretary, *Peace Action* would also feature articles by such isolationists as historian Charles Callan Tansill, Major General William C. Rivers, and Oswald Garrison Villard.

Because any study that concentrates on the perception of the anti-interventionists must focus on ideological factors, and therefore upon intellectuals, the collegiate press is an indispensible source. A reading of the *Daily Maroon* of the University of Chicago gives the isolationist views of sociologist William F. Ogburn, physiologist A. J. Carlson, and economist Maynard Krueger, who was Norman Thomas's running mate in 1940. Another *Maroon,* this one of Colgate University, featured the views of economist Kenneth Boulding, who advocated conscientious objection. Columnist Kurt Vonnegut of the *Cornell Daily Sun* found sense in Lindbergh's isolationism. The *Yale Daily News* featured the anti-interventionist articles of its young chairman Kingman Brewster. The *Harvard Crimson* gave vent to the antiwar position of sociologists Pitirim A. Sorokin and Nicholas S. Timasheff, political scientist Arthur N. Holcombe, and philosopher William Ernest Hocking. There are other ways, too, in which a survey of college journals is valuable. Outside speakers, student organizations, polls of student opinion—all can often be found only in this source.[6]

Once such sources are mastered, the researcher is ready to tackle the main problem, that of anti-interventionist perceptions. One begins this study with some brief background. There is, first of all, the matter of definition, and more succinctly why "isolationists" denied the appropriateness of this label. Second, one must reveal how what was essentially a highly disparate group perceived the

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American mission and American tradition. How could the American past have been interpreted in such staunchly isolationist terms, particularly when the United States has its own imperialist tradition and was not above seeking expediential alliances? Here two works by Charles A. Beard are of crucial importance, for they show how the most influential historian of the 1930s retained a "Continentalism" amid the outbreak of World War II: *Giddy Minds and Foreign Policy: An Estimate of American Foreign Policy* (1939) and *A Foreign Policy for Americans* (1940). Examination of the reception these books received is important, particularly as they came at a time when many of Beard's fellow liberals were beginning to abandon the noninterventionist position. So too is the frequent juxtaposition of Beard's *Foreign Policy* and Raymond Leslie Buell's internationalist *Isolated America* (1940).

Next the researcher moves to United States entry into World War I and the subsequent peace. There is, of course, no need to repeat the comprehensive findings of Warren I. Cohen, *The American Revisionists: The Lessons of Intervention in World War I* (1967), or John Edward Wiltz's able study of the Nye committee, *In Search of Peace: The Senate Munitions Inquiry, 1934–*1936 (1963). However, it is essential to show the degree to which anti-interventionists saw the recent tragic history of the Great War repeating itself. Journalist C. Hartley Grattan, in *The Deadly Parallel* (1939), noted that this "parallel" went far beyond supplying belligerents with loans and munitions; it extended to such matters as Sumner Welles's diplomatic mission conducted early in 1940 and the arming of American merchant ships.

After touching on the Versailles treaty, the historian must capture—although with brevity—how the isolationists in retrospect accounted for the rise of Hitler, Japan's success in Manchuria, and the fascist victories in Ethiopia and Spain. To what degree, the investigator must ask, did anti-interventionists see the goals of the totalitarian powers as legitimate? Conversely, to what degree were Britain and France blamed for not resisting, at least at Munich? Here one must note the isolationist reception of *The German White Paper: Full Text of the Polish Documents Issued by the German Foreign Office* (1940), foreword by C. Hartley Grattan. In what was supposedly a series of Polish diplomatic documents just captured by the Germans, it was "revealed" that the Roosevelt administration had promised to back the British and French if they resisted German demands upon Poland. Equally if not more important to the historian is the perception anti-interventionists had of the Danzig incident and of the general nature of the Polish regime.

One now moves to one of the crucial questions: To what degree did fear of domestic ruin lie at the basis of anti-interventionism? Business spokesmen made no secret of their belief that war would bring socialism, while Socialists and trade unionists in turn were apprehensive that war would create a form of fascism, one in which bankers and large corporations would seize control. For all con-

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cerned, there was the prediction that war led to government controls, though one must ask why it was invariably assumed that these controls would be operated by hostile forces. Unlike those progressives who in 1917 saw the advent of war as creating the needed rationalization of American society, anti-interventionists of many political stripes feared that—even in the best of hands—the mere existence of wartime powers meant the loss of vital civil and economic liberties.

Several works revealed this apprehension. Rose M. Stein, in her *M-Day: The First Day of War* (1936), wrote of a secret Industrial Mobilization Plan to use a war emergency in order to militarize the nation and scrap recently passed social legislation. The volume edited by Larry Nixon, *What Will Happen and What to Do When War Comes* (1939), gave a picture only somewhat less frightening. And even if the government did not impose corporate fascism, economic consequences of war were stark indeed. Memories of the 1919 recession remained vivid, that of 1929 even more so. Labor would invariably face subsistence wages, the outlawing of strikes, and—most important of all—state dictation of the activity of every worker. One would expect Socialists and liberals to be particularly fearful of M-Day, for they were the ones who most suffered from the hysteria of World War I and the Red Scare.

However, the anxieties of such isolationists as Senator Arthur H. Vandenberg, Congressman Paul Shafer, and General Hugh Johnson revealed that some conservatives were fearful as well. Did the rural and small-town isolationist, often an Old Guard Republican, believe that war would invariably lead to the greater urbanization and corporatization of American society? If so, how much evidence can be brought behind this claim? How much fear was there that small individually owned units would fall by the wayside, unable to compete with massive government-sponsored corporate entities? Or did anxieties remain more on the surface, centering on the belief that inflation and taxation necessary to fight a successful war would destroy the economy? And to what degree can the historian argue that this provincial sentiment lay at the very core of much of the isolationist movement, as reflected both in the House of Representatives and in the general population? Conversely, can one talk in terms of an urban isolationism? After all, such cities as New York, Chicago, and St. Louis possessed strong isolationist groups, and it is doubtful that one could explain all of this urban activity in terms of Irish-American, German-American, and Italian-American enclaves.

Other anxieties were manifest, political as well as economic ones. Particularly after the fall of France, anti-interventionists claimed that the Roosevelt administration was deliberately creating a climate of hysteria. To them, talk of a fifth column was intended to stifle democratic dissent; stress upon enemy air attack was aimed at militarizing the nation. Fears even centered on the Federal Bureau of Investigation, an institution later held sacrosanct by many who once stood in isolationist ranks. Such figures as John T. Flynn, Gerald P. Nye, and Charles Clayton Morrison all voiced concern over the FBI's power, and we now know that Lind-

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bergh was subject to FBI surveillance. To what degree did anti-interventionists genuinely fear the elimination of American democracy, and how far did such fears reach beyond liberals acutely aware of infringements of civil liberties?

Secret diplomacy was an area of anti-interventionist concern. The publication of *American White Paper* (1940), written by Washington columnists Joseph Alsop and Robert Kintner, revealed—to the satisfaction of the isolationists—that early in the spring of 1940, Roosevelt had toyed with the idea of sending American naval and air forces to France. To what degree did anti-interventionists see Roosevelt making secret commitments and how could these commitments supposedly bind the nation? Presidential power, many anti-interventionists felt, was subject to such abuse that a public referendum should be conducted before the United States entered any war. But why was there such faith that mass opinion would keep the nation out of war?

At this point, the researcher turns to anti-interventionist perceptions concerning the general nature of the conflict. Comprehensive and highly debated treatments include Anne Morrow Lindbergh's *The Wave of the Future* (1940) and Lawrence Dennis's *The Dynamics of War and Revolution* (1940). Although John Foster Dulles was by no means an isolationist, his *War, Peace and Change* must be considered. Not only did many isolationists endorse his arguments against collective security, in 1940 Dulles himself personally praised Charles A. Lindbergh for speaking out against Roosevelt's foreign policy. In the same year, Dulles told Anne Morrow Lindbergh, whose book he praised, that the United States should stop giving false hope to the Allies and seek an end to the European war. How was each of these books received, and to what degree did they engender serious debate?

Many isolationists, particularly as the war went on, prefaced their remarks with condemnation of Nazism and hopes for an Allied victory. Yet they often claimed that the European war was an imperialist one, a fight over spoils between two rival power blocs. It must be noted that the accusation of imperialist war was by no means limited to Communists. It extended to a wide variety of non-interventionists, including Charles A. Lindbergh, Chester Bowles, Congressman Clare Hoffman, Arthur H. Vandenberg, William E. Borah, Charles Clayton Morrison, and William Randolph Hearst. The investigator is forced to ask if, in some sense, a crypto-Leninist picture of the "Second Imperialist War" was not permeating some highly unlikely places.

One must also treat, with far more thoroughness than has been done, the whole anti-interventionist response to "Christian realism," that form of power politics advocated by Reinhold Niebuhr and the intellectual orbit of New York's Union Theological Seminary. By no means did all "isolationists" and "pacifists" speak out of naive utopianism. Many offered concrete suggestions and analysis. Furthermore, while Charles Clayton Morrison, editor of the *Christian Century,* conceded error on certain points, he claimed quite correctly that the Niebuhrians were deliberately misrepresenting much of his antiwar position.

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The points made in 1971 by the prominent church historian Robert Moats Miller need repeating: There are far fewer writings devoted to Christian pacifists and war opponents than to pacifism's severest critic, Reinhold Niebuhr; scholars still assume that Niebuhr demolished the case for pacifism; the righteous indignation of the pro-Niebuhr historians ignores or rationalizes Allied mass atrocities committed upon the peoples of the Axis powers.[7] Obviously the entire topic needs renewed examination.

Anti-interventionists continually hammered at the matter of Allied war aims. Britain was suspected of seeking many things—bringing Hapsburg rule to Austria and Bavaria; destruction and dismemberment of Germany; a new Versailles diktat; negotiations with a Nazi "moderate" like Goering. With none of these alternatives were the anti-interventionists in sympathy. France, making no secret of desiring the partition of Germany, was not deemed worthy of discussion. All along, isolationists kept pressing for an official declaration of war aims, undoubtedly doing so not so much in expectation of receiving any statement so much as to embarrass the Allied cause. Certainly, in the summer of 1941, when the Atlantic Charter was released, most anti-interventionists found it either too vague or utopian or inferred that sinister commitments were made during the Roosevelt-Churchill meeting in Argentia, Newfoundland. Only a few anti-interventionists, such as Frederick J. Libby and General Robert E. Wood, welcomed the terms. One must ask what war aims the anti-interventionists would have found acceptable, for they saw even the most idealistic goals as smokescreens for gross and sordid deals.

Not that "idealist" war aims made things easier. Noninterventionists were extremely suspicious of any plans of world organization, and Clarence Streit's scheme of Federal Union, popularly called "Union Now," particularly aroused their ire. Streit advocated a federal union of fifteen Western democratic powers. Within this union, all citizens would enjoy a common defense, economy, and monetary system; however, their old nation-states would retain complete home rule on all else. One would expect such ardent nationalists as Senator Rush Dew Holt, Boake Carter, and the *Saturday Evening Post* to be hostile. One should note, however, that such pacifists as A. J. Muste and Frederick J. Libby were far from enthusiastic.

Were the anti-interventionists genuinely fearful of a supranational body deciding America's fate and plunging her into interminable war? In other words, was Federal Union perceived as a serious threat to American sovereignty? Occasionally, an anti-interventionist had written seriously on problems of world order, and here one should note Felix Morley's *The Society of Nations* (1932) and Alfred M. Bingham's *The United States of Europe* (1940). Yet one must ask if many of the more ardent isolationists consciously exaggerated threats, doing so in an effort to frighten Americans concerning the consequences of entering into binding alliances.

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The perception of German war aims also needs investigation. Germany, many anti-interventionists believed, did not seek a sphere of influence in the Western Hemisphere, much less conquest of the entire world. Rather it sought domination over central and eastern Europe, which—to some isolationists—was quite inevitable. As Congressman Usher Burdick commented, "If Germany wants a United States of Europe and can put it over, that is the business of Europe and not ours."[8] But even if German goals were so limited, why were anti-interventionists so confident that a radical shift of the balance of power in Europe would little affect the power balance in the Western Hemisphere? In short, what is the wider rationale at work here?

This takes the researcher to a related question. Why did so many anti-interventionists stress the supposed weakness of Germany, especially after she had appeared to win spectacular victories? The tone was originally set by Oswald Garrison Villard's book *Within Germany* (1940), based upon his recent trip to Europe. Lothrop Stoddard's *Into the Darkness: Nazi Germany Today* (1940) made similar observations: The German people hated the war, though they would fight to retain hegemony over central Europe. John Cudahy's *The Armies March: A Personal Report* (1941) stressed the indifference of the average German citizen toward his government. Even as Germany made one conquest after another, anti-interventionists claimed that in some ways Germany's expansion only made her weaker. Economist John T. Flynn, for example, foresaw the inevitable crackup of the German Empire; so did Trotskyist Dwight Macdonald.

Attacks on Britain were by no means limited to Communists, Coughlinites, and various Irish-American nationalists. Late in 1939, Senator Robert M. La Follette, Jr., opposed British trade in strategic resources with the Soviet Union.[9] In May 1941, Senator Charles W. Tobey claimed that Britain had contributed $3 billion to Hitler's rearmament at a time she was repudiating her debt to America.[10] It was the liberal editor and radio commentator Quincy Howe who wrote books bearing the titles *England Expects Every American to Do His Duty* (1937) and *Blood Is Thicker Than Water: The Prudent American's Guide to Peace and War* (1939), both containing attacks on the British Empire.

Preliminary research, however, leads the investigator to ask one question here: whether there are inordinately more attacks on Britain from the old progressive wing of isolationism—as represented by the likes of Senators Burton K. Wheeler and Gerald P. Nye—than from the more orthodox Old Guard Republican segment. To hear some of the former, it was Britain, not Germany, that was at the brink of war with the United States. Commented interventionist Congressman Charles A. Eaton, "According to that view, Hitler is the great uncrowned saint of the modern world. And Britain is the menace we must meet."[11] Though Eaton was undoubtedly engaged in a bit of demagogy, the cry was often heard that Britain was competing with the United States for crucial markets, refusing to pay her

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war debts, seizing American mail, and submitting American vessels to an illegal blockade. Moreover, so extreme critics claimed, the emergency war powers adopted by Britain were so drastic that she had ceased to be a democracy.

If few books were as vitriolic against Britain as Theodore Dreiser's *America Is Worth Saving* (1941), hardly a British leader escaped isolationist scorn. Lords Lothian and Halifax, ambassadors in turn to the United States, were attacked as being too trusting of the Germans, Prime Minister Churchill as being too imperialist. Both the *Daily Worker* and the Hearst press enjoyed citing George Bernard Shaw's cynical attacks on the British war effort. However, such conservative isolationists as Amos Pinchot feared the growing influence of the British Labour Party, and in particular its supposedly sinister "theoretician," Harold J. Laski.

Isolationists of all varieties frequently attacked the British Empire. They invariably sympathized with India's nationalist movement and saw Britain's hedging on Indian independence as evidence of hypocrisy. Student isolationists in particular enjoyed having young Congress Party leaders speak at antiwar rallies. There was not the same broad basis of support for Ireland, though those who addressed themselves to the issue usually portrayed Britain as an oppressive power and backed Irish resistance to the placing of British bases on Irish soil.

Given this kind of all-out attack on British leaders and on the empire, one must ask if the more ardent anti-British spokesmen would find any British leadership or policies acceptable. Would anything short of a truce, engineered—let us say—by a new government headed by Lloyd George, have been found tolerable? And would anything short of total and immediate dissolution of the empire be proof that Britain was really a democracy? After all, efforts of such British liberals as Sir Norman Angell to defend the "commonwealth" system met with a deaf ear, as did Laski's claim that wartime restrictions did not destroy democratic practice on the British Isles.

To the anti-interventionists, the Roosevelt administration was misrepresenting the entire nature of the war. So, too, was an Eastern-dominated mass media. Hence there were few topics to which they gave as much attention as propaganda. Most historians, when covering propaganda, focus on the abortive investigations of the movie industry in the fall of 1941. But concern lasted much longer and went much deeper. Radio commentators, foreign lecturers, relief organizations—all could convey the virus. Anti-interventionist liberals were as concerned as conservatives, as witness the frequent comments made by the *Christian Century, Uncensored,* and Oswald Garrison Villard. Harold Levine and James Wechsler's *War Propaganda and the United States* (1940) met with a particularly warm welcome. Yet if anti-interventionists saw the media so one-sided, did they consider counterstrategies? There were hints of several efforts along this line, including the founding of an isolationist-leaning monthly to compete with the *Nation* and the *New Republic.*

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Only after such examination of the underlying domestic focus of the anti-interventionists, and after looking at the general way in which they perceived the issues at stake in the conflict, can the narrative make the best sense. But even here one begins with general observations. For example, isolationists argued that to supply the Allies, even on a cash-and-carry basis, could only prolong a brutal war. They correctly saw that Germany was too strong for France and Britain to invade. But why, from the time war broke out in September 1939 to the end of the "Phony War," did they deny that Hitler could break through the Western front? Would isolationist sentiments have been eroded had the Allies been able to launch a quick blitzkrieg upon Germany and had rapidly occupied that country?

Thanks to the efforts of many historians, we now have detailed histories of legislative battles. Hence the historian now has only to delve into those aspects of legislative history that illuminate broader anti-interventionist perceptions. Turning first to the debates over cash-and-carry, adopted in November 1939, certain things should be noted. First, in no other debate before Pearl Harbor was the matter of international law so systematically explored. Edwin M. Borchard and William Potter Lage's *Neutrality for the United States* had just been published two years earlier, and an updated edition was due in 1940. The argument concerning international law did not simply come from such rigid traditionalists as Borchard and his strong ally John Bassett Moore, but from the far more moderate Philip C. Jessup. Moreover, the argument that it was both unwise and wrong even to appear to be taking sides in the new European war was seen as quite a legitimate one to advance. To what degree did anti-interventionists use international law arguments down to Pearl Harbor? Given the flagrant violations by all powers, how did they ever think that such law could be enforced or that, once the war was over, this law could be restored and claims appropriately adjusted?

Second, in no other debate was the precedent of World War I raised so much. Nye in particular drew upon the findings of his famous committee to investigate the munitions industry to stress one factor: the Wilson administration once stood at the very crossroads at which the Roosevelt administration stood in 1939.

Third, by no means did all anti-interventionists oppose cash-and-carry. In fact, such isolationists as Senator Robert A. Taft and General Robert E. Wood, soon to be chairman of the America First Committee, favored the measure. What caused such a split among the anti-interventionists? Just as crucial, when did a consensus emerge that further interventionist moves were dangerous?

Then there is the issue of Finland, invaded by the Soviet Union on November 30, 1939. Here again the isolationists were divided. Some, such as Vandenberg, not only favored loans to Finland, but sought withdrawing diplomatic recognition from the Soviet Union. Herbert Hoover personally directed one relief effort, the Finnish Relief Fund. Yet other isolationists backed Senator Alexander Wiley, concurring with his comment, "Do not open this door."[12] The fear was obvious:

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If loans were extended to Finland, they would be extended to the Allies as well.

A further problem: Why was so much attention—and this was true of the nation as a whole—focused on Finland rather than on Poland, the first victim of the European war? True, one could claim that Poland was a lost cause, but even when it appeared briefly that Poland might hold out, that nation drew comparatively little sympathy. Moreover, why were any anti-interventionists, who were so fearful of possible Rooseveltian machinations, willing to aid the Finnish cause? Could the Finland case show that the views of some isolationists were determined more by an effort to check the power of the Soviet Union than by strict anti-interventionist canons? Had France and Britain sent troops to aid the Finns, would the isolationists have been more responsive to their general war effort?

When one approaches those crucial events of the spring of 1940, several questions come to the fore. To what degree did the fall of Norway lead isolationists to blame Britain, advancing the argument later stressed by such historians as B. H. Liddell Hart: Britain's mining of Norwegian waters was a provocative act that invariably triggered the German invasion.

Turning to the capitulation of France, how did most anti-interventionists react? More important, just where did they see internal French responsibility? Preliminary investigation shows that anti-interventionists of the right, such as *Scribner's Commentator*, strongly indicated Leon Blum's Popular Front, which ruled France from 1936 to 1938. By the same token, rightist isolationists promoted such books as Stanton B. Leeds, *These Rule France: The Story of Edouard Daladier and Men around Daladier* (1940) and René de Chambrun, *I Saw France Fall* (1940), both attacks on the Popular Front. Such liberals as Frank C. Hanighen, however, strongly defended the Blum regime. Few anti-interventionists claimed that General Pétain had any option in collaborating with the Germans. At one point Herbert Hoover speculated that a defeated France might lead a Latin bloc of Spain, Italy, and the Balkan states, but did other anti-interventionists share his views?

To other anti-interventionists, France raised additional issues as well. Both left and right placed much blame on American Ambassador William E. Bullitt for allegedly and irresponsibly promising France American support before war broke out. Similarly, anti-interventionists of all political persuasions deplored the French presence abroad, particularly the repression of Syria and Indochina. Also opposed was the general loss of civil liberties within wartime France and the surreptitious trade with Germany in strategic materials.

Given the unlikelihood of a possible Allied victory, much less imposing a quick defeat on Germany, from the very outset of the war most anti-interventionists sought a negotiated peace. Suggested mediators included the European neutrals, Pope Pius XII, and—despite deep suspicions—President Roosevelt. Much interest was taken in the mission of diplomat Sumner Welles, who visited the major belligerent capitals in February and March 1940, though there was some suspi-

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cion that a new House-Grey agreement might be in the offing. Similarly the Hess flight of May 1941 brought hopes of truce talks.[13]

But mere descriptions of peace expectations and specific proposals beg the question. What would likely be the international power alignment resulting from any negotiation? How could anything resembling a Wilsonian peace be adopted, much less enforced? How did negotiation proponents meet the argument that Hitler would use truce time to make himself invincible, while America and Britain would do comparatively little? If it was assumed that Hitler would remain at least in economic control of the European continent, to what degree would the political autonomy of the various European states be affected?

Also important and undoubtedly related is the Hoover food plan. In a statement released on August 11, 1940, Hoover established the Committee on Food for the Small Democracies. Through the Committee, Hoover planned to feed some 27 million Europeans, mostly women and children. Hoover claimed that unless food were made immediately available, much of Europe would starve. By the middle of February 1941, the Committee had over 1,500 chapters and was endorsed by 600 prominent Americans. The plan, however, never had a chance, in large part because the Roosevelt administration insisted upon cooperating with the British blockade.

The project had strong political overtones. It was endorsed by several prominent interventionists, including General John J. Pershing and Admiral William V. Pratt, and was treated favorably in *Time* magazine. Yet much of Hoover's support came from isolationists and pacifists, and the America First Committee endorsed the effort. The extensive pacifist support is hardly surprising, for the pacifists were always quick to endorse any project that had strong humanitarian overtones. But what accounts for so much strong isolationist backing? Obviously, here, too, there was much focus on the relief of suffering. Yet undoubtedly there was the realization that a man of international stature, who had strong isolationist proclivities, could well be catapulted into major diplomatic decision-making. After all, the former president had directed the food section of the Supreme Economic Council at Versailles as well as food relief in the Soviet Union in 1921.

But whether or not a negotiated peace or the Hoover food plan was in the offing, anti-interventionists stressed that the United States could well defend herself. When interventionists warned that the nation could well go the way of Poland, Finland, France, and China, their critics challenged them point by point. Often cited was the report of the Senate Committee on Naval Affairs, released in June 1940. Chaired by the isolationist David I. Walsh, the committee claimed that the United States could be defended by guarding vital air and sea approaches. Furthermore, argued many anti-interventionists, Hitler's continual conquests only weakened him. By spreading his occupation forces so thin, it would be difficult enough for him to keep control of the European continent.

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In book form, the anti-interventionist military perspective was found in such works as Al Williams, *Air Power* (1940), Fleming MacLiesh and Cushman Reynolds, *Strategy of the Americas* (1941), and Hanson W. Baldwin, *United We Stand! Defense of the Western Hemisphere* (1941). All three were less pacifist in perspective than Oswald Garrison Villard's *Our Military Chaos: The Truth About Defense* (1939). All such authors claimed that a continental defense was not only possible; it was the most desirable of all strategies. By proper allocation of the nation's resources, all of North America and much of South America could be defended. Moreover, within the hemisphere lay practically every raw material needed to fight a modern war, including rubber and tin. But one must ask how the hemisphere's undeveloped resources could meet immediate military demands, and how long it would take to become independent of crucial resources in Southeast Asia.

Most isolationists stressed air power heavily. Indeed Senator Ernest Lundeen and Major Al Williams were not alone in asking that the Army and Navy departments be matched by a new, autonomous, and powerful department of the Air Force. In one sense the isolationist argument was simple: While no foreign power was able to conduct continuous bombardment of the United States, the United States in contrast could easily pick off any attacking aircraft. Yet a careful study of how air power had been used in the first two years of the European war, and had come to be used as the war continued, would show that air power was effective only when supported by infantry and tanks. Hence the logical question arises: Did the isolationists really perceive the limitations of air power as well as its strengths?

Turning to the Navy, preliminary research shows that a naval strategy did not draw the unanimity that air strategy did. One leading isolationist, Senator Walsh, saw salvation lying through the battleship. Those of like mind denied that the United States could be outproduced in any naval race, even if the Germans captured the British fleet. Yet to what degree did the navalists represent the bulk of isolationist sentiment? Congressman Hamilton Fish, for example, strongly opposed major naval increases, finding such forces obsolete.

Almost all isolationists doubted the wisdom of a large army. In their eyes, the war of maneuver, used so successfully by Germany had made huge numbers of ground forces obsolete. Many echoed sentiments articulated in Hoffman Nickerson, *The Armed Horde, 1793–1939* (1940). While the German blitzkrieg obviously influenced such thinking, one wonders if most minds were made up by memories of the Somme and the Meuse-Argonne.

Given this general stance, the debate over the Burke-Wadsworth conscription bill, signed in September 1940, takes on meaning. To many anti-interventionists, the issue involved more than the "Prussianization" of American life. The move, they thought, actually weakened the nation, wasting American manpower in futile exercises and fighting with weapons that—even if available—modern warfare had

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long made obsolete. Moreover, the attention of the nation could only be diverted from the more pressing business of rebuilding America's productive capacity and manufacturing armaments.

Yet one must look at the occasional isolationist voice, such as the *New York Daily News*, that endorsed the draft. What was the logic of those who did not adopt the general isolationist position? Why did not more isolationists endorse the Swiss citizen-soldier system advocated by Hearst? Did the fact that some isolationists sought to meet War Department requirements by volunteer recruitment—in lieu of a draft—mean that they tacitly went along with the Department's suddenly high projections?

In the debate over draft renewal, conducted in the summer of 1941, isolationists accused the administration of retaining a standing army in order to create a new American Expeditionary Force. Furthermore, so they claimed, keeping the troops in training camps was not needed. Britain was making gains in Africa, the Near East, and on sea, while Germany was facing heavy losses in Russia. Given the fact that the draft extension proposal passed the House by one vote, could a concerted isolationist campaign—spearheaded by America First—have defeated the bill? Or would such a crusade have backfired, bringing blame upon the bill's foes for cutting the ground under an army just being formed? Is there any evidence for the suspicion that at least some isolationists tacitly saw the need for a mass army as the nation moved closer to war?

Isolationists were almost unanimous in perceiving the Monroe Doctrine as involving as much of a "hands off" warning to European activity in the Western Hemisphere as a pledge to abstain from "meddling" abroad. Certainly, isolationists saw North and Central America, and the Caribbean, as in the U.S. sphere of influence. Obviously there was a bit of demagogy behind the push of senators Ernest Lundeen and Robert Rice Reynolds to grab the European-owned islands of the West Indies, supposedly in lieu of debts still owed from World War I. Equally obviously, however, the demand struck a ready chord among isolationists—and some others as well. There was more at work than mere vengeance upon an "ungrateful" Europe. There was a legitimate fear, shared by the Roosevelt administration, that Hitler's conquest of European nations would cause him to claim their possessions in the New World.

In September 1940, the destroyer-bases deal ensured that the United States had ninety-nine-year leases for bases in Newfoundland and the Caribbean. Several isolationist voices, including the *Chicago Tribune* and the *New York Daily News*, welcomed the deal. By far the greater number, however, thought the price in battleships too high and claimed that Roosevelt was acting unconstitutionally. But would the critics of the arrangement have been satisfied with anything other than an outright ceding of the bases involved and perhaps the islands proper? And if so, would they have been willing to see the United States assume responsibility, particularly in depression times, for raising living standards in impoverished Caribbean islands?

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Though isolationists talked much about the hemispheric defense, they differed among themselves as to how much of South America the United States could defend against overseas attack. Why did some question the wisdom of attempting to defend the entire hemisphere, particularly as interventionists continually articulated fears of the two continents isolated in an Axis world? And how many noninterventionists shared the concerns of Carlton Beals, whose *Pan America* (1940) combined pleas for hemispheric unity with an end to U.S. and European domination of Latin America?

When one examines hemispheric defense in detail, one finds isolationists frequently commenting on other areas, ranging from Alaska to the Azores. To what degree did they endorse defending Canada, given their apprehension that Canada, a belligerent, could drag the Western Hemisphere into the European conflict? The fact that Canada was experiencing various wartime controls, including the sacrifice of some civil liberties, made her even less appealing as an ally. On the other hand, in any serious strategy of hemispheric defense, Canada would have to play a major role.

In 1940, such isolationists as Lundeen and Fish called for the purchase of Greenland. Yet, in April 1941, when the United States received Denmark's permission to operate defense installations there, other isolationists—including Lindbergh—downplayed its value and opposed military occupation. Similar objections came from Lindbergh and America First when, in July 1941, the United States landed forces in Iceland, also an area that has been sought by Fish and Lundeen. To what degree did such objections center on the matter of presidential powers? Did the fear center on their use as convoy stations? Were Greenland and Iceland seen as natural appendages to Europe, not North America? To what degree did any strategic rationale coincide, or conflict, with the desire to avoid warlike provocation.

At the same time that they preached hemispheric defense, anti-interventionists denied that a new American Expeditionary Force could invade Europe. Such an effort would be too costly, taking perhaps five years and involving several million casualties. World War I, if anything, was a negative precedent, for in 1917 and 1918 the United States was able to land troops safely on the French coast, and the Central Powers were forced to fight on several fronts. However, to what degree was their argument stymied by the fact that many interventionists, including President Roosevelt, usually envisioned air and sea commitments, with ground forces kept to a minimum?

The interventionists, from Roosevelt on down, argued strongly that an Axis victory would isolate the United States commercially, so much so that the nation could survive as a capitalist power only with difficulty. Anti-interventionists proposed a number of ways to meet this challenge. Vital raw materials, usually imported from Asia, could be replaced by substitutes or new sources of supply, though one must raise questions concerning the time contemplated for such

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substitutes to be developed on a large scale. Some Latin American markets could be expanded to compensate for the loss of European ones, yet here one must ask if the Latin American states would ever have the purchasing power to compensate for the loss of German-occupied Europe. One should note that such isolationists as General Wood conceded that beef, cotton, wool, and copper of Brazil, Chile, and Argentina found natural markets in Europe; with the exception of copper, they could only compete with U.S. production. How many isolationists agreed with Nye, who was so fearful of Britain's commercial strength that he welcomed her destruction as a trading power?

The isolationists spoke of other alternatives. Several, including the research division of the America First Committee, argued that a Nazi-occupied Europe would be dependent upon outside sources of supply, including American raw materials. How could German occupation of Russia affect such a prediction, particularly given the abundance of grain in the Ukraine and oil in the Caucasus? Economic autarchy, that is the development of total national self-sufficiency, was a favorite solution of Herbert Hoover. But would such a solution necessitate the very kind of economic controls that Hoover abhorred? Occasionally the whole concept of an economic open door was challenged. See, for example, Jerome Frank, *Save America First: How to Make Our Democracy Work* (1938) and John Chamberlain, *The American Stakes* (1940). But how many anti-interventionists thought in such comprehensive terms?[14]

Only after such examination of the general strategic and economic doctrines of the anti-interventionists should the historian return to a study of the narrative. Here again, many excellent monographs have covered debates and events fully. Hence, one can now ask what the specific events reveal about general anti-interventionist perceptions. Obviously, the period from the fall of France to Pearl Harbor contains many important events to which anti-interventionists reacted: the air battle over Britain and the possible threat of a German invasion of the British Isles; the appointment in June 1940 of ardent interventionists Henry L. Stimson and Frank Knox, respectively, to the Army and Navy cabinet positions; the presidential election of 1940, in which debate over intervention played a significant role; the debate over lend-lease; the formation of the America First and No Foreign War committees; the extension of the war to Greece and Yugoslavia; Hitler's invasion of Russia; the sinking of various American ships; and the debate over total repeal of the neutrality acts.

Anti-interventionist reaction to all these issues must be placed in a wider context, one that deals with the broader prognosis concerning the war. Of course, all reaction is of necessity sporadic and the possibility of finding broader patterns difficult. Yet some preliminary observations may be in order. Throughout much of 1940, most noninterventionists saw only stalemate or British defeat ahead. Germany could not be easily dislodged from the European continent, while Britain herself might well be invaded. Yet even stalemate would be ruinous for Europe, as communism would eventually dominate everywhere.

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By the spring of 1941, isolationists were increasingly talking in terms of British defeat, though relatively few saw the British Isles invaded. Germany, many believed, was bound to occupy the Balkans, and isolationists argued that American encouragement of Yugoslavian and Greek resistance would simply make the situation worse. Indeed, General William J. ("Wild Bill") Donovan received heavy blame for misleading the Yugoslavs concerning imminent American aid. What made the isolationists so pessimistic concerning Britain's chances, particularly since Britain had often held her own in East Africa and the Near East?

We now have major treatments of the lend-lease controversy, including Warren F. Kimball's *The Most Unsordid Act: Lend-Lease, 1939–1941* (1969). Hence any work on anti-interventionist reaction can best center on issues that have wider manifestations—international law, presidential power, and such alternatives as a major loan to Britain.

Moving to the Soviet Union, one must note that extensive anti-interventionist attention to Russia began well before June 22, 1941, the date of Hitler's invasion. Ever since the European war had broken out, anti-interventionists constantly stressed that the conflict could result only in the spread of communism throughout all Europe. A few liberal isolationists, such as Harry Elmer Barnes, claimed that the Hitler-Stalin pact gave the Western Allies their just deserts, for their conduct at Munich revealed that they were never serious about forming an anti-German alliance. However, most isolationists not only condemned the pact; they equally strongly condemned Russia's conquests in Poland, the Baltic states, and Finland. When Finland invaded Russia in 1941, acting in coordination with Germany, many isolationists supported the Finnish action. A good many anti-interventionists claimed that the Soviet Union, by withholding support from either side, was driving a hard bargain with Hitler. Indeed, Stalin—not Hitler—could well be the more clever leader.

Few isolationists went as far as Freda Utley. The British-born journalist argued in *The Dream We Lost: Soviet Russia Then and Now* (1940) that under conditions of peace and economic opportunity, Germany could well turn toward democracy, while Russia never could. However, a good many isolationists saw the Soviet Union as the more oppressive world power. In short, while the difference between the Nazi and Communist regimes was one of degree, not kind. Germany fared better—if only slighty—in the moral equation. When Roosevelt—in calling for lend-lease to Russia—said that the Soviet constitution of 1936 guaranteed religious liberty, isolationists gleefully pounced on the statement. Such perspectives need extensive research, particularly since much of the American public was learning far more of Germany's crimes than those of Russia.

In August 1941, various isolationists—Hiram Johnson and Hamilton Fish among them—hoped that both powers would destroy each other, something they believed more likely to happen if the United States remained aloof. By October and even November, isolationists predicted Stalin's defeat. The German advance had been

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so swift, and her army so powerful, that victory was almost inevitable. Only a few isolationists—Senator Burton K. Wheeler for one—endorsed any aid to Russia. But what, in isolationist eyes, would German domination of Russia mean for a general European balance of power? Why were some hopeful that a quick German conquest would be a prelude to a European peace?

Turning to the issue of neutrality repeal, one finds several themes needing investigation. In November 1941, Congress voted to arm American merchant vessels and permit them to carry cargoes to belligerent ports. Why, in arguing against the bill, did isolationists keep stressing matters of international law, both in relation to various American ships already sunk (the *Lehigh, Robin Moor, Greer, Kearny*) as well as in relation to the proposed legislation? After all, it must have been obvious to all concerned that international law could at best play a minor role in the conflict. Another question: How valid was the isolationist claim that the armament to be provided for the American ships was ineffective, particularly against submarines and aircraft? Still another point: How viable was one option posed by the isolationists, to place under British registry whatever ships carried supplies to the Allies?

When it comes to Japan, there is enough material concerning the anti-interventionist response to make a small book. Events that must be examined for isolationist response include the following: Secretary of State Cordell Hull's announcement on July 26, 1939, that the United States intended to abrogate the 1911 commercial treaty within six months; the termination of the 1911 treaty in January 1940; Hull's warning the Japanese on April 17, 1940, to keep their hands off the Dutch East Indies; the formation of the Tripartite Pact on September 27, 1940; Japan's occupation of French Indochina on July 24, 1941; Roosevelt's freezing of Japanese credits in the United States on July 26, 1941, thus bringing all Japanese-American trade to a halt; the Hull-Nomura talks beginning on November 20; and the Pearl Harbor attack on December 7. Particularly important would be any critique of the American negotiating position, particularly concerning Japanese withdrawal from China.

Many anti-interventionists, particularly in Congress, opposed the continual supplying of aviation gasoline and scrap iron to Japan, both on the grounds that such activity violated the spirit of the neutrality acts and that Japan's conduct in China had been barbarous. Without American supplies, Japan's war effort could not continue. Freda Utley spoke for this element of noninterventionism when she wrote *Japan's Feet of Clay* (1937) and kept repeating her argument until the Pearl Harbor attack.

However, to stress anti-Japanese sentiment only oversimplifies far more diffuse reactions. Preliminary investigation indicates that, outside the Congress, most anti-interventionists did not want to confront Japan, though the extent of this sentiment still must be measured. America Firstism by no means embodied Asia Firstism. Furthermore, the researcher must note various degrees of vacillation

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toward Japan. For example, in July 1941, Wheeler defended the freezing of Japanese assets, but a month later he grew apprehensive.

Those anti-interventionists who sought to avoid confrontation gave varied reasons, and the historian must weigh their importance. An occasional isolationist, such as John Bassett Moore, denied that China was a nation-state; it was, said the prominent jurist, simply "a geographic name." And an occasional author, like Ralph Townsend, would denounce the Chinese people as epitomizing *Ways That Are Dark* (1933). (One should also note Townsend's *Asia Answers* [1936]). But only a small minority spoke this way. A good many stressed America's relatively lucrative trade with Japan as compared with China. Former American diplomat William R. Castle saw Japan's domination of the Asian mainland as inevitable; in fact he predicted that it might well result in demands for American goods. The economic case was most ably made by investment counselor William J. Baxter in *Japan and America Must Work Together* (1940). Many anti-interventionists denied that there was any material American interest in the Far East worth a war. To some isolationists, entanglement with Japan was seen as the "backdoor to war," particularly after the formal formation of the Tripartite alliance. Not only could war with Japan lead to war in Europe; the adminstration—they believed—was using the pretense of a Japanese threat to buttress an alien Western presence in Hong Kong, Singapore, French Indochina, and the Dutch East Indies. Even some pacifists stressed that Japan had legitimate economic problems, as she lacked the food, natural resources, and living space to support her burgeoning population.

Most anti-interventionists claimed that Japan posed no military threat. She would be unable to attack a well-fortified Hawaii, much less the United States. On the other hand, all isolationist scenarios of war with Japan showed that conquest of Japan would be quite difficult, perhaps impossible. The overwhelming majority of military experts, isolationists argued, had found the Philippines and Guam undefensible, and the United States should make no commitment there. Frequently quoted were the views of the retired Major General William C. Rivers, who had once been stationed in the Philippines. William Randolph Hearst was in a decided minority among anti-interventionists in calling for the retention of the Philippines, though he did not think Japan belligerent and looked forward to an accommodation with her.

After such comprehensive examination of the anti-interventionist's general perspective, one may start to determine if we are dealing with more than a mere ad hoc response. To what degree might there be, at least in embryo, a sustained geopolitical position, one as rooted in analyses of the balance of power overseas as in domestic anxieties? Or is the position fundamentally a "reactive" one, that is, one that would never have been formulated had it not been for Roosevelt's international initiatives? Are the anti-interventionists "antis" in the truest sense, in that there was little to bind them together beyond opposition to administration

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measures? An initial investigation shows that some of the leadership of the America First Committee, for example, feared that the organization was too negative and that it lacked the kind of positive ideology that would have given it staying power. A responsible answer to these questions takes the researcher well into the decade preceding those tumultuous years, 1939–1941. But, by starting here, one can at least begin to understand this complicated and diffuse phenomenon.

NOTES

1. Manfred Jonas, "Isolationism," in Alexander DeConde, ed., *Encyclopedia of American Foreign Policy: Studies of the Principal Movements and Ideas*, vol. 2 (New York: Scribner's, 1978), p. 496.
2. The author of this article has contributed various bibliographical essays, including *The Liberature of Isolationism: A Guide to Non-Interventionist Scholarship, 1930-1972* (Colorado Springs, Colo.: Ralph Myles, 1972); "Beyond Polemics: An Historiographical Re-Appraisal of American Entry into World War II," *History Teacher* 11 (February 1979); 217–51; and "The Anti-Interventionist Tradition: Leadership and Perceptions," *Literature of Liberty* 4 (Summer 1981): 7–67.
3. Wayne S. Cole, *Roosevelt and the Isolationists, 1932–45* (Lincoln: University of Nebraska Press, 1983), p. 320.
4. Among the manuscripts examined by the author and their repositories are *Frankling D. Roosevelt Presidential Library:* Franklin D. Roosevelt, Emil Hurja; *Library of Congress:* Robert A. Taft, Robert M. La Follette, Jr., Amos Pinchot; *Bancroft Library of the University of California at Berkeley:* Hiram Johnson; *Hoover Institution on War, Revolution and Peace:* Freda Utley, America First Committee, Raymond Moley; *Herbert Hoover Presidential Library, West Branch, Iowa:* Herbert Hoover, Verne Marshall, William R. Castle, Gerald P. Nye; *Princeton University:* John Foster Dulles; *Yale University:* Edwin M. Borchard, Alfred M. Bingham, Jerome Frank; *Ohio Historical Society:* John Vorys, Frederick C. Smith; *University of Oregon:* John T. Flynn, Merwin K. Hart; *State Historical Society of Wisconsin:* Philip F. La Follette; *University of Wyoming:* Harry Elmer Barnes; *Swarthmore College Peace Collection:* Keep America Out of War Congress, Women's International League for Peace and Freedom, Fellowship of Reconciliation, National Council for the Prevention of War, Youth Committee Against War, A. J. Muste.
5. Michael Straight, *After Long Silence* (New York: Norton, 1983), p. 159.
6. Among the collegiate newspapers examined by the author are the *Amherst Student, Antioch Record, Barnard Bulletin, Brooklyn College Vanguard, Brown Daily Herald, Bryn Mawr College News, Daily Californian* (University of California, Berkeley), *The Campus* (City College of New York), *Main Events* (City College of New York evening session), *Clark News* (renamed *The Scarlet*), *Daily Maroon* (University of Chicago), *Colgate Maroon, Cornell Daily Sun, Columbia Spectator, The Dartmouth, Fordham Ram, Hatchet* (George Washington University), *The Hoya* (Georgetown University), *Harvard Crimson, Haverford News, Johns Hopkins Newsletter, Diamondback* (University of Maryland), *Michigan Daily* (University of Michigan), *Mount Holyoke News, The New Hampshire* (University of New Hampshire), *Daily Tar Heel* (University of North Carolina), *Heights Daily News* (University Heights campus, New York University), *Washington Square College Bulletin* (New York University), *Daily Northwestern, Daily Princetonian, Tower Times* (women's college, University of Rochester), *Smith College Weekly* (retitled *Smith College Associated News*), *Stanford Daily, Swarthmore Phoenix, Union Review* (Union Theological Seminary, New York), *California Daily Bruin* (University of California at Los Angeles), *Vanderbilt Hustler, Vassar Miscellany News, Wesleyan Argus, Wellesley College News, Williams Record, Daily Cardinal* (University of Wisconsin), *Yale Daily News.*
7. *Robert Moats Miller, How Shall They Hear Without a Preacher? The Life of Ernest Fremont Tittle* (Chapel Hill: University of North Carolina Press, 1971), pp. 453–56.
8. Burdick, *Congressional Record*, 12 August 1941, p. 7002.
9. La Follette, *Congressional Record*, 12 October 1939, p. 331.
10. Tobey, *Congressional Record*, 11 May 1941, p. A2267.

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11. Eaton, *Congressional Record*, 12 November 1941, p. 8778.
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13. For a preliminary survey that focuses on such questions, see the author's "Germany in Isolationist Ideology, 1939–1941: The Issue of a Negotiated Peace," in Hans L. Trefousse, *Germany and America: Essays on Problems of International Relations and Immigration* (New York: Brooklyn College Press, 1980), pp. 215–26.
14. For the author's preliminary findings on this matter, see "Power, Markets, and Ideology: The Isolationist Response to Roosevelt Policy, 1940–1941," in Leonard P. Liggio and James J. Martin, eds., *Watershed of Empire: Essays on New Deal Foreign Policy* (Colorado Springs, Colo.: Ralph Myles, 1976), pp. 132–61.

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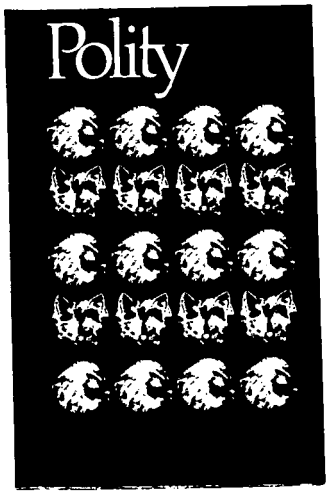

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